Q. Did Defendant's Exhibit C provide for an impartial umpire in case of disagreement?

A. Yes, sir.

Q. And during the period of 1950 and 1951 were the firms of Daniels & Kennedy and J. Arthur Kennedy & Son, Inc. members or associate members of the New York Shipping Association, and did they contribute toward the pension and welfare funds?

A. I do not keep track of the funds of the Association. My best recollection is that they were members during that period, and if they were they had to contribute.

Q. Now again referring to the Government's Exhibit 1-C and Government's Exhibit 1-D, may I ask you what the collective bargaining unit was under these two agreements?

Mr. BAUMAN: May I object on the further ground that the exhibits speak for themselves, they being already in evidence, that the witness testified to his construction as to what they apply to—but while he might conceivably qualify as an expert, does [161] not meet the objection that they speak for themselves.

The COURT: Of course they do speak for themselves but I will allow it if they do not change in any way a modified agreement.

Can you tell by looking at those agreements?

The WITNESS: I think so, your Honor.

The COURT: All right.

114-116 A. The International Longshoremen's Association and its affiliated locals were the party representing the employees.

Q. And what was the collective bargaining unit——

A. In both of these exhibits.

Q. Yes, and what was the collective bargaining unit in both of these exhibits—what area did it cover?

A. The Port of Greater New York and vicinity.

Q. And that bargaining unit has been in existence for how long?

A. Oh, prior to my association with the Shipping Association, but the records in the office, I believe, go back to about 1915 or 1916.

Q. And would that be so that throughout that period the Port of Greater New York was the collective bargaining unit?

A. Yes, sir.

Q. And was that unit recognized by the NLRB in which such an election was held?

A. That unit was recognized in the certification or the International Longshoremen's Association, independent as the collective bargaining agency, as the exclusive bargaining agency.

Q. Have you that certification with you?

A. I have something which was handed to me by the file clerk. I asked her for what had been received from the office of the National Labor Relations Board regarding certification and this was

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TRANSCRIPT OF RECORD

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1955

No. 281

UNITED STATES OF AMERICA, PETITIONER,

vs.

JOSEPH P. RYAN

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

PETITION FOR CERTIORARI FILED JULY 29, 1955

CERTIORARI GRANTED OCTOBER 17, 1955

taken from the files of the New York Shipping Association (handing to Mr. Waldman).

Q. And does this paper that you have handed me, both the collective bargaining unit and the certification of who is the representative of employees?

A. It does.

Mr. WALDMAN: I offer it in evidence.

* * * * * * *

117 Q. Please look at the first paragraph of Government's Exhibit 1-C and Government's Exhibit 1-D and tell his Honor whether you can tell from those exhibits who, in the years 1950 and 1951, were recognized by the employers as the employees' collective bargaining agent in the Port of New York?

A. Yes, I can.

Q. Please tell the Court?

A. The International Longshoremen's Association and its affiliated locals.

Q. Now, did there come a time when the question as to who was a representative of employees in this port involving longshore labor, was challenged—the recognition as to who was the representative of employees.

* * * * * * *

118 A. The representation of employees by the ILA was challenged.

Q. And who challenged it, and when?

A. The organization originally known as International Longshoremen's Association, AF of L—American Federation of Labor—filed a petition for representation election with the National Labor Relations Board early in October 1953.

Mr. BAUMAN: I now renew my motion to strike on the grounds that this is clearly without the issues of the indictment.

The COURT: Yes. I will sustain the objection.

* * * * * * *

119 Mr. WALDMAN: Will your Honor permit the question to be answered, merely fixing the date of the challenge?

The COURT: All right, I will let him fix it.

Mr. WALDMAN: That is right.

By Mr. WALDMAN:

Q. Will you be good enough to answer it?

A. I think I said it was challenged early in October 1953.

Q. All right. Prior to that date was there any challenge from any source, either by a rival union or any group of employees as to who first—as to the bargaining unit adopted by the New York Shipping Administration and the ILA in their collective agreements?

Mr. BAUMAN: I——

Q. (Continuing) Concerning longshore labor.

Mr. BAUMAN: I now renew my objection on the ground that the question calls for a conclusion on the part of this witness, and on the grounds previously state.

The COURT: I will allow it. Overruled.

A. From the time of my personal connection with the New York Shipping Association, which I think was in 1933, there was no challenge as to representation for longshoremen. I must
120-122 qualify that to this extent: Some time after 1933—I do not recall the exact year—there was a challenge by a local group with respect to representation of tractor-drivers who are associated with gangs of longshoremen, and there was an informal hearing at the National Labor Relations Board, and the matter was dismissed. But that is the only thing I recall.

Q. The challenge was dismissed?

A. The challenge was dismissed.

Q. And that informal hearing or conference, that is one of the steps—I will withdraw that question.

Informal hearings and conferences are some of the steps taken by the NLRB in determining whether a complaint should lie or elections take place?

A. That is correct.

Q. And in that informal conference and hearing was the unit, the collective bargaining unit in the Port continued or fixed as the Port—portwide?

A. It was.

Q. And were the representatives of employees again held to be the ILA and its locals?

A. It was, because the other application was dismissed.

Q. Was dismissed?

A. Yes.

Q And other than that challenge and the result of the hearing and the conference that you had, and the result of that hearing and conference, had there been any other challenge up to on or about October 1953 as to the two propositions; The collective bargaining unit or as to whether the ILA and its locals were the representatives of employees?

A. None to my knowledge since 1933.

* * * * * *

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1955

No. 281

UNITED STATES OF AMERICA, PETITIONER,

vs.

JOSEPH P. RYAN

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

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Mr. WALDMAN: May I offer in evidence, purely for the purpose of showing the form used by the National Labor Relations Board, and for no other purpose (handing to Mr. Bauman).

* * * * * * *

130 (Marked Defendant's Exhibit E.)

By Mr. WALDMAN:

Q. Now I direct your attention to Defendant's Exhibit E in evidence and ask you whether you know what goes into the
131-140 blank after the words "It is hereby certified," in a case where an organization is elected as the representative of employees.

* * * * * * *

Q. Where an organization is elected as the representative of employees.

A. It would be the name of the union in there.

Q. Of the organization?

A. Of the organization.

Q. Now where an individual is elected as a representative of employees, what is inserted in that blank space?

A. The name of the individual.

* * * * * * *

141 COLLOQUY BETWEEN COURT AND COUNSEL

The COURT: Now on that point, Mr. Bauman, is it not a fair statement to say that this record is completely barren of any proof or any implication that the defendant received any money for a corrupt purpose or for the purpose of influencing a judgment in any manner, and that the most that can be concluded from the Government's case is that amounts of money were transferred in the form of Christmas gratuities or presents and were accepted by the defendant without explanation and without any surrounding
142 evidence indicating that they were used or attempted to be used to affect his course of conduct in connection with his union?

Mr. BAUMAN: No, I would say that that is not the situation. The record is not barren of circumstances indicating a contrary purpose.

The COURT: Well, I wish you would point them out to me because I am frank to say up to this point I fail to see what inferences you have been able to establish that indicate any such contrary purpose.

* * * * * * *

The COURT: Miss Kennedy testified that this defendant's name was one of a number of names taken from a Christmas list, and she brought this list down to the stenographer working in an open room with other employees, so there was apparently no office secret about it. The envelopes were prepared. The defendant's envelope was one of many other envelopes. Christmas presents are often exchanged from palm to palm, and this door wasn't kept locked for the purpose of this transaction. I think that the evidence indicates that it was the business office normally being occupied for its usual business, and that in the normal course of conduct James C. Kennedy got into the office and transferred the money, but I would like you to point out what was surreptitious about it—and assuming it was surreptitious, if you can assume that it was a surreptitious transfer of money, what is there in the record which would justify any trier of fact in concluding that there was a corrupt purpose in giving and a corrupt purpose in receiving, or that the donee's mind was intended to be corrupted to the disadvantage of the union employees whom he was representing.

Mr. BAUMAN: Does your Honor want me to address myself to the corrupt purpose in giving as well as the corrupt purpose in receiving?

143-144 The COURT: Any fact, because we have a very, very brief record here, and it seems to me that most of the basic facts are undisputed. It seems to me that we are left with a record which establishes the transfer of money for Christmas gratuities as a good-will gratuity by one business man to a union official.

So far as I can tell from this record there is not a single element of proof or a single implication indicating that the defendant was sought to be corrupted or was in fact corrupted, or that the bargaining power of the employees whom he represented as president of this International Longshoremen's Association was in any way impaired or diminished. Now if I am wrong, I want you to point that out. As I see it, we are left with a transfer of gratuities, Christmas presents, and that is all. If there is anything more to it than that, I wish you would tell me what there is in this case that would justify the inference that there is anything more to it.

* * * * * * *

145 Mr. BAUMAN: Of course I think it is perfectly clear, your Honor, but I should like to make it so—I am merely responding to your Honor's question as to whether there is any indication of evil purpose in this, and I am equally sure it is clear to your Honor that the Government's contention is that there need not be—that there need be none, that if in fact these are Christmas presents or any other kind of thing of value, under the terms of the

United States District Court
Southern District of New York

Criminal Docket

Crim. No. C143/80

Violation T. 29 Sec. 186(b)(d) USC

Being a representative of employees who were employed in an industry affecting commerce did unlawfully, wilfully and knowingly receive and accept sums of money

3 counts

THE UNITED STATES

vs.

JOSEPH P. RYAN

DOCKET ENTRIES

2-1-55. Defendant Joseph P. Ryan Fine $2500.00
2-1-55. Cash Acct. Deft. W & W Rec'd 5.00
2-4-55. Cash Acct. Deft. Pd U S Treas Disb. 5.00
12-4-53. Filed Indictment—Ordered Sealed Dimock *J.*
1-8-54. Sealed Indictment ordered opened on motion of the Govt. I. R. Kaufman *J.*
1-12-54. Pleads Not Guilty—Bail $2500. Paroled until 4 PM to give bail—Deft ordered fingerprinted I. R. Kaufman *J.*
5-12-54. Filed recognizance dated 1-12-54 for $2500. Mftrs. Cas Ins Co.
11-9-54. Trial begun before Palmieri, J. Deft. moves to dismiss. Denied. Deft. govt. and Court sign stipulation "Waiving Trial by Jury".
11-22-54. Trial cont'd.
2 11-23-54. Trial cont'd and concluded. Decision reversed. Bail cont'd. Palmieri, *J.*
11-24-54. Filed waiver of trial by jury. Approved, Palmieri, *J.*
December 9, 1954. Filed Transcript of record of proceedings, dated 11/19-22/23/54
January 7, 1955. Filed Transcript of record of proceedings, dated Jan. 12, 1954
1-24-55. Filed Opinion #21656 by Palmieri, *J.* The defendant is found guilty as charged under Counts 1, 2 and 3 of the indictment and is directed to surrender forthwith for the purpose of pre-sentence investigation. Sentence will be imposed on February 1, 1955, at 10:00 AM.

DOCKET ENTRIES

1-28-55. Filed motion for arrest of judgment. Memo endorsed: Motion Denied. Palmieri, *J.*

2-1-55. Filed Judgment # Six Months on counts 1-2-3 to run concurrently at a place of confinement to be designated by the Atty Genl. Fined $2500. to cover counts 1-2-3 and to stand committed until fine is paid or he is otherwise discharged according to law. Execution of prison sentence and payment of fine stayed pending appeal. Bail bond ordered continued during such stay. Palmieri, *J.*

2-1-55. Issued commitments and copies.

2-1-55. Filed Notice of Appeal. Clerk's fees $5

2-2-55. Filed bond pending appeal for $2500. Mftrs Cas Ins Co.

2-21-55. Filed transcript of record of proceedings, dated 2/1/55

3 In United States District Court

INDICTMENT—Filed Dec. 4, 1953

The Grand Jury charges:

1. On or about December 15, 1950, in the Southern District of New York, JOSEPH P. RYAN, the defendant, being a representative of employees who were employed in an industry affecting commerce, to wit, President of the International Longshoremen's Association, did unlawfully, wilfully and knowingly receive and accept money from J. Arthur Kennedy & Son, Inc., the employer of such employees, to wit, the sum of $1,000. (Title 29, Section 186(b)(d), United States Code).

Second Count

The Grand Jury further charges:

1. In and about April, 1951, in the Southern District of New York, JOSEPH P. RYAN, the defendant, being a representative of employees who were employed in an industry affecting commerce, to wit, President of the International Longshoremen's Association, did unlawfully, wilfully and knowingly receive and accept money from Daniels & Kennedy, Inc., the employer of such employees, to wit, the sum of $500. (Title 29, Section 186(b)(d), United States Code).

4-19 *Indictment*

Third Count

The Grand Jury further charges:

1. On or about December 15, 1951, in the Southern District of New York, JOSEPH P. RYAN, the defendant, being a representative

of employees who were employed in an industry affecting commerce, to wit, President of the International Longshoremen's Association, did unlawfully, wilfully and knowingly receive and accept money from Daniels & Kennedy, Inc., the employer of such employees, to wit, the sum of $1,000. (Title 29, Section 186(b)(d), United States Code).

.....

Foreman.

J. EDWARD LUMBARD,
United States Attorney.

* * * * * * *

20 **Excerpts from Testimony**

STIPULATION OF FACTS READ INTO RECORD

Mr. BAUMAN: I think in fairness to Mr. Waldman I ought to do something I overlooked doing before I put Miss Kennedy on the stand, and that is to read in evidence the stipulation that we signed.

May I read that?

The COURT: Yes.

Mr. BAUMAN (Reading):

"It is hereby stipulated, consented to and agreed, by and between counsel for the United States of America and counsel for the defendant Joseph P. Ryan, that the following facts are established for all purposes in the above-entitled case, and in said case only,

21 provided, however, that (1) the defendant is not precluded by this stipulation from raising any objections or making any motions before, during or after trial with respect to the sufficiency and validity of the indictment or the statute on which it is based and by this stipulation he does not waive in any way such motions or objections; (2) nothing herein contained shall be deemed an admission by the defendant personally; (3) all facts set forth in this stipulation in its entirety shall be deemed a part of the Government's case; (4) the defendant shall have the right to make such motions as he sees fit at the end of the Government's case as though the facts herein set forth had been established by the introduction of evidence in the Government's case; and (5) that this stipulation shall be used only on a trial of the defendant in the above-entitled case under Indictment No. C 143-80;

1. Joseph P. Ryan was President of the International Longshoremen's Association (hereinafter referred to as "ILA") in 1950 and 1951 and of the Atlantic Coast District of the ILA in 1950 and 1951.

2. The ILA in 1950 and 1951, and for many years prior thereto, was a labor organization, an international, having thousands of members, several geographical subdivisions known as "Coast Dis-

tricts" (including the Atlantic Coast District), Local District Councils, and several hundred local unions in various ports in the United States, Canada and certain territorial possessions of the United States; the ILA was governed in 1950 and 1951 by a Constitution, copies of the two Constitutions in effect during this period being annexed hereto and made a part hereof as Exhibits
22 "A" and "B"; the ILA, the Atlantic Coast District of the ILA, and the local unions affiliated with the ILA, bargained collectively on behalf of their members and others employed in longshore labor with employers of longshore labor in these ports, and entered into collective bargaining contracts with such employers; the ILA was affiliated with the American Federation of Labor; the Atlantic Coast District of the ILA and the local unions affiliated with the ILA were also labor organizations.

3. J. Arthur Kennedy & Son, Inc. in 1950 was a New York corporation engaged in the business of warehousing, trucking and stevedoring in New York City.

4. Daniels & Kennedy, Inc. in 1951 was a New York corporation engaged principally in the trucking business and also engaged in the warehousing and stevedoring business in New York City.

5. J. Arthur Kennedy & Son, Inc. in 1950 and Daniels & Kennedy, Inc. in 1951 were associate members of the New York Shipping Association (hereinafter referred to as "NYSA").

6. J. Arthur Kennedy & Son, Inc. in 1950, and Daniels & Kennedy, Inc. in 1951, by reason of their associate membership in the NYSA, gave authority to the NYSA to negotiate with the ILA, the Atlantic Coast District of the ILA, and the ILA's affiliated locals, a collective bargaining agreement with respect to terms and conditions of employment of longshore labor employed by members of the NYSA, including the said firms in the Port of New York in 1950 and 1951 respectively.

23 *Stipulation of Facts Read into Record*

7. The ILA, the Atlantic Coast District of the ILA, and the ILA's affiliated local unions were the recognized bargaining agents for longshore labor in the Port of New York in 1950 and 1951.

8. The NYSA and ILA, the Atlantic Coast District of the ILA, and the ILA's affiliated local unions entered into a collective bargaining contract in 1950, effective October 1, 1949, with reference to the terms and conditions of employment of longshore labor in the Port of New York which was in effect from October 1, 1949 to September 30, 1951, except as to wage rates which were reopened and negotiated in 1950, the new wage rates being effective from October 1, 1950 to September 30, 1951.

9. The NYSA and ILA, the Atlantic Coast District of the ILA, and the ILA's affiliated local unions entered into a collective bar-

gaining contract dated December 4, 1951 with reference to the terms and conditions of employment of longshore labor in the Port of New York which was in effect October 1, 1951 to December 31, 1951.

10. Joseph P. Ryan, President of the ILA, was its principal executive officer in 1950 and 1951, and was a member of the "Committee for the International Longshoremen's Association and its Affiliated Locals" (hereinafter referred to as the "Wage Scale Committee of the ILA" and the "ILA Wage Scale Committee") which negotiated the collective bargaining contracts with the NYSA described in paragraphs 8 and 9 hereof.

11. The Wage Scale Committee of the ILA in 1950 and 1951, which is referred to in paragraph 10 hereof, consisted of over
100 persons from ports covering the entire Atlantic Coast
24 District, some being officers of the Atlantic Coast District and the great majority being selected by the various locals affiliated with the ILA in the Atlantic Coast District.

12. The said collective bargaining contracts referred to in paragraphs 8 and 9 were negotiated by the ILA Wage Scale Committee subject to action by the membership of the ILA Atlantic Coast District and were not made or executed without approval by said membership.

13. The collective bargaining contracts between the ILA and NYSA referred to in paragraphs 8 and 9 hereof were signed by the defendant, Joseph P. Ryan, and others in the manner shown by the photostatic copies of said contracts for 1950 and 1951 annexed hereto and made a part hereof as Exhibit "C" and Exhibit "D" respectively. The signatories on behalf of the ILA and its Atlantic Coast District were authorized in each case to sign the said contract by the ILA, the Atlantic Coast District, and the ILA's affiliated locals.

14. J. Arthur Kennedy & Son, Inc. in 1950 and Daniels & Kennedy, Inc. in 1951 were bound by the terms of the contracts described in paragraphs 8 and 9 hereof.

15. The local unions affiliated with the ILA, and the Atlantic Coast District of the ILA, were parties to and bound by the terms of the contracts described in paragraphs 8 and 9 here.

16. J. Arthur Kennedy & Son, Inc., in 1950 and Daniels & Kennedy, Inc. in 1951 employed, among others, members of local unions affiliated with the ILA and within the geographical area of
25-94 its Atlantic Coast District and such locals were bound by the terms of its contracts.

17. J. Arthur Kennedy & Son, Inc. in 1950 and Daniels & Kennedy, Inc. in 1951 were engaged in an industry affecting interstate Commerce.

18. The employees of J. Arthur Kennedy & Son, Inc. in 1950 and of Daniels & Kennedy, Inc. in 1951 who were members of local

unions affiliated with the ILA were employed in an industry affecting interstate commerce."

And it is signed by J. Edward Lumbard, United States Attorney, Attorney for United States of America and Waldman & Waldman, Attorneys for defendant.

And may the record show that it is this stipulation with reference to what your Honor interrogated the defendant and Mr. Waldman made his own statement a few moments ago.

The COURT: Yes, the record will so indicate.

Mr. BAUMAN: May I hand this up to the Court. The exhibits are attached (handing to Court).

The COURT: Is there any objection to marking this, for purposes of identification, since it is already a part of the record?

Mr. WALDMAN: Not at all, your Honor.

The COURT: Just so that it appears what papers I will be looking at. It may be marked for identification.

(Marked Government's Exhibit 1 for identification.)

* * * * * * *

95 JOSEPH MAYPER, called as a witness on behalf of the defendant, being first duly sworn, testified as follows:

DIRECT EXAMINATION.

By Mr. WALDMAN:

Q. Mr. Mayper, you are an attorney and counselor at law?

A. I am.

Q. And have you been such for how long?

A. Oh, some 40 years or so.

Q. Are you counsel to the New York Shipping Association?

A. I am.

Q. Where are their offices?

A. 80 Broad Street, New York.

Q. Where are your offices, sir?

A. The same place.

Q. In the years 1950 and 1951, Mr. Mayper, in addition to being counsel for the New York Shipping Association, were you also secretary of the Association?

A. I was.

Q. And how long have you been secretary of the Association and counsel to it?

A. I think since 1933, I was secretary until about the middle of 1952. I became counsel for the Association, I believe it was
96 in 1948, and I am at present counsel.

Q. Now both as counsel and secretary of the Association,

did you participate in the negotiations and the making of collective agreements between the New York Shipping Association and the ILA?

A. I was present during the negotiations, at most of the negotiation meetings. I did not personally participate in the actual negotiations.

Q. And you have observed those negotiations?

A. Yes, sir.

Q. You kept records of those negotiations?

A. Only records that required the formulation of provisions of an agreement, either the offers or the proposals from time to time but not minutes—nothing of that kind.

Q. No, I did not mean minutes.

A. No, I am sorry.

Q. But you did keep records at each negotiation for the purpose of your own decisions and to get continuing information from session to session?

A. They were all—I am afraid I can't answer your question yes or no.

Q. All right.

A. They were all temporary notes that were made at the time, and when the agreement was finally formulated those notes were destroyed. They had no meaning.

Q. But you were the person who did that?

A. Most of it. Occasionally members of the Conference Committee did.

Mr. WALDMAN: Your Honor, may I have Government's Exhibit 1?

(The Court hands to Mr. Waldman.)

Mr. WALDMAN: Thank you very much.

Q. In the years 1950 and 1951 did there exist in your industry a pension plan?

A. Yes, sir.

Q. And who were the parties to it, who set it up?

97-105 A. As the result of an agreement, a collective bargaining agreement between the International Longshoremen's Association and the members of the New York Shipping Association, a joint committee of the International Longshoremen's Association and of the New York Shipping Association formulated a pension plan.

Q. Was that known as a joint committee?

A. Yes, sir.

Q. I direct your attention to Government's Exhibit 1-C, being the general cargo agreement between the New York Shipping Association on the one hand, and the International Longshoremen's

Association and its affiliated locals on the other, and ask you to please look at paragraph——

Mr. WALDMAN: Will your Honor excuse me for just one second?

The COURT: Certainly.

(Mr. Waldman examines.)

Q. —paragraph 25 of this exhibit, and tell us whether the joint committee of the employers and the union is the committee you have referred to in your previous answer, as having developed the pension plan (handing to witness).

A. That is correct. That is the reference.

Q. And can you tell the Court who on behalf of the ILA or the union represented the union in that negotiation?

* * * * * * * * *

106 Mr. WALDMAN: What was the last, please?

(Record read.)

A. My best recollection is that there was a—the entire joint committee consisted of ten people—five representing the union and five representing the employers.

Q. Was the defendant, Mr. Joseph P. Ryan, a member of the committee representing the union in that negotiation?

A. No, sir.

Q. As a result of the negotiations between the committee of five representing the New York Shipping Association and the committee of five representing the union, was there an agreement reached?

A. Ultimately, yes.

Q. When you say "Ultimately," how long did the negotiations last?

A. It lasted quite a number of months—possibly six or seven or eight months, something like that.

107 Q. And at the end of that period was a written agreement reached?

A. A written pension plan was prepared.

Q. Did you, in pursuance to a subpoena duces tecum, produce the original of that plan or a certified copy?

A. I have produced the original from the files of the Pension Board.

Q. Incidentally, are you co-counsel of the Pension Board?

A. I am.

Q. Representing the employers?

A. I am, sir.

Q. And my firm is co-counsel representing the Pension Board representing the union?

A. That is correct.

Q. All right.

A. This is the original plan taken from the files of the pension Board (handing).

Mr. WALDMAN: May I offer this plan in evidence—I withdraw that.

Q. Was the paper you handed me the plan that existed in 1950 and in 1951?

A. That existed in 1950. There were certain amendments made early in 1951.

Mr. WALDMAN: I offer the agreement in evidence (handing to Mr. Bauman).

108 (Marked Defendant's Exhibit A.)

Mr. WALDMAN: Your Honor, may we ask leave of the Court—and I hope with the consent of Mr. Bauman—to substitute for this original a photostat of the original so that the original can go back to the files?

Mr. BAUMAN: No objection.

Mr. WALDMAN: Thank you very much.

Q. Was an impartial umpire provided for under this plan?

A. One of the causes provides for the appointment of an impartial arbitrator in the event that the board of trustees or the Pension Board is unable to agree.

109 Q. Was a board of trustees set up under the plan?

A. It was.

Q. And what did that consist of?

A. Five representatives of the employers designated by the New York Shipping Association and five representatives of the employees designated by the International Longshoremen's Association.

Q. Now was there in existence, during the period of 1950 and 1951, a welfare plan in the industry in pursuance of the collective agreement, Government's Exhibits 1 and 2?

A. There was.

Q. And was that plan negotiated between representatives of the union and representatives of the New York Shipping Association?

A. It was.

Q. And who represented the union in that negotiation?

A. I am afraid my memory isn't too certain about that. The original negotiations I did not participate in, although I was present at a number of the sessions. I think again there was Mr. Connoly—Patrick Connoly, one of the officials of the ILA. I think

Harry Hasselgren,—I think he is now the International Secretary and treasurer of the ILA.

Well, I could refresh my memory if it is important.

Q. In any event, was Mr. Joseph P. Ryan, the defendant herein, a member of the committee representing the union in that negotiation?

A. I am not certain. I doubt it but I am not certain.

Q. Was an agreement reached as the result of the negotiations between the union representatives and the New York Shipping Association on the welfare plan?

A. There was.

Q. And was that agreement reduced to writing?

A. It was reduced to writing.

Q. And did you, in pursuance to a subpoena duces tecum, produce that agreement?

A. I did.

Q. Will you be good enough to hand it to me?

A. It says "Agreement and declaration of Trust between the employer members of the New York Shipping Association and the International Longshoremen's Association entered into as of"—entered into December 31, 1948 (handing to Mr. Waldman).

WALDMAN: I offer it in evidence (handing to Mr. Bauman).

Mr. BAUMAN: The same objection, sir.

The COURT: The same ruling.

(Marked Defendant's Exhibit B.)

Mr. WALDMAN: May we have the same stipulation, your Honor, as to substituting a photostat for this original?

Mr. BAUMAN: No objection.

The COURT: Yes.

By Mr. WALDMAN:

Q. Now in pursuance of that agreement, Defendant's Exhibit B, was a board of trustees set up?

111 A. It was.

Q. Did the board consist equally of representatives of the union, of an equal number of representatives of the union and of representatives of the New York Shipping Association?

A. Three from each side.

Q. Was provision made for an impartial umpire?

A. The provision, in the event of a difference or disagreement between members of the board.

Q. And this agreement that you produced, Defendant's Exhibit B, was in force and effect in the years 1950 and 1951?

A. No, that was in effect only in 1949, which was the first year.

I think it became operative January 1, 1949. There were other agreements in 1950.

Q. Well, was this plan renewed from year to year or period to period?

A. The plan was renewed as the collective bargaining agreements terminated every two years. There was a provision in the collective bargaining agreement that the welfare fund relationship continue with certain modifications here and there.

Mr. BAUMAN: I now further move——

Mr. WALDMAN: I think I will cure it in a minute.

Mr. BAUMAN: Fine.

Q. And did the extensions as you described continue the agreement, Defendant's Exhibit B, for [158] the period 1950 and 1951?

A. In the form—yes, in the form of a new agreement and declaration of trust.

* * * * * * *

112 Q. Have you brought with you, Mr. Mayper, the agreement which was in existence in 1950 and 1951 in connection with welfare?

A. I have.

Q. And is that based on the agreement, Defendant's Exhibit B?

A. It is a continuation of the same agreement with certain modifications (handing to Mr. Waldman).

Q. You are now handing me a paper. Is this paper that you just handed me the agreement which contains the renewals of Defendant's Exhibit B, with modifications?

A. Yes, sir.

Q. And was in existence in 1950 and 1951?

A. That is correct.

Mr. WALDMAN: I offer it in evidence (handing to Mr. Bauman).

Mr. BAUMAN: No objection.

(Marked Defendant's Exhibit C.)

113 By Mr. WALDMAN:

Q. Referring to Defendant's Exhibit C in evidence, could you tell the Court, please, whether the amendments contained in Defendant's Exhibit C affected the setting up of trustees?

A. It did.

Q. What was the effect of that?

A. The board of six—three representing the employers and three representing the union,—the employees designated in the same manner that I have testified before for the first agreement.

123-124 FRANK RUMINSKI, called as a witness on behalf of the defendant, being first duly sworn, testified as follows:

DIRECT EXAMINATION.

By M. WALDMAN:

Q. Mr. Ruminski, what is your profession or business or occupation?

A. I am employed as assistant supervisor of mails, files and dockets for the National Labor Relations Board, 2 Park Avenue.

Q. Are you familiar with the various forms used by the National Labor Relations Board?

A. I am.

Q. How long have you been so employed?

A. 16 years, not counting the Army time.

Q. Did you, in pursuance to a subpoena duces tecum, produce the forms, certain forms used by the NLRB?

A. I did.

* * * * * * *

125-128 Q. Did you bring withyou a form of certification of representatives as used by the National Labor Relations Board or the Regional Office here at Park Avenue, wherein an individual is certified as a representative of employees?

A. I think you have reference to the Shenker Displays, Incorporated, Board No. 2-RM-371.

Q. Well, before you proceed to give us a specific form, may I ask you whether the National Labor Relations Board and the Regional Office of the National Labor Relations Board, in which you are the clerk, has forms wherein you certify as representatives of employees individuals as distinguished from organizations?

* * * * * * *

129 Q. I think my last question was whether you had a form applicable to individual members.

Now you are producing from your files a typical form of certification of representatives where an individual was elected as the representative of employees?

A. I have. The form number is the same, 765-A. I see the revision date is January '51.

Q. January '51?

A. Yes, sir.

Q. Now this form that you are now producing is a form used for both organizational or individual representatives, is that right?

A. That is right.

Act about which we are litigating they are prohibited between employers and representatives of employees.

* * * * * * *

The COURT: Do you claim that this statute is well drawn as a matter of draftsmanship?

Mr. BAUMAN: I do not know that I am qualified to——

The COURT: Well, I wish you would devote some attention to that in your brief because I am very seriously concerned about its adequacy as a penal statute, and I want to call your attention, while we are at it, to the fact that Section 302(g) of the bill, as passed by the Senate, provided the following which, unfortunately from the standpoint of legal draftsmanship, was omitted in the final bill. It provides as follows—and this bill was passed by the Senate—"For the purposes of this section, the term 'representative'"—and they were referring to this very provision—"means any labor organization which, or any individual who, is authorized or purports to be authorized to deal with an employer, on behalf of two or more of his employees, concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work; and for the purposes of Section 301 includes any other
146 organization or fund of which some of the officers are representatives or are members of a labor organization or are elected or appointed by a representative."

That definition was completely left out in the final bill as passed, so that unless you go to other sections of the bill and reach out for other help in other directions, we have no standards by which the Court can determine with precision the nature of the legal relationship required by this law before the malum prohibitum descends upon the transaction and says that it is illegal.

Isn't it pretty clear that the—to make this a little simpler, isn't this statute so broad and so loosely drawn that it can be made of exactly what a Court wants to make of it, or a prosecutor wants to make of it?

Mr. BAUMAN: Not at all, sir.

The COURT: So that you can pick and choose among defendants and among persons to be prosecuted just about whomsoever you want? Isn't it that kind of statute?

Mr. BAUMAN: No, not a bit.

The COURT: Hasn't it been thoroughly emasculated according to the debates in Congress, not only to the point where it is inartistically drawn but inadequately drawn?

Mr. BAUMAN: No because it described the course of conduct proscribed for various classes of people.

The COURT: Now it would be very easy—and I want you to give this some thought and refer to it in your brief—it would be very

easy for me to think up a number of situations where Courts could very validly ascribe all kinds of different and conflicting meanings to this statutory provision, to the point where it could be taken to mean almost anything, and in that connection I want to draw your attention to one fact which I think is undisputed here among the lawyers, and that is that this statute has been on the books for something like eight years. The jurisprudence of our country and our Federal Courts is completely barren of any precedent
147 interpreting or clarifying this law, despite the fact that there has been notorious public knowledge of any number of situations involving the passage of money between employers and union representatives of various kinds.

How do you explain that fact? How is it that you, as a prosecutor, after eight years of the existence of this statute will come before a Federal Court and urge the application of this statute to the situation?

* * * * * * * *

IN UNITED STATES DISTRICT COURT

APPEARANCES:

Hon. J. Edward Lumbard, United States Attorney for the Southern District of New York, Attorney for United States, Arnold Bauman, George H. Bailey, and Dennis C. Mahoney, Esqs., of Counsel.

Waldman & Waldman, Esqs., Attorneys for Defendant, 305 Broadway, New York 7, N. Y., Louis Waldman, Seymour M. Waldman and Martin Markson, Esqs., of Counsel.

OPINION—January 24, 1955

PALMIERI, D. J.:

The defendant, Joseph P. Ryan, was indicted on three counts for alleged violation of section 302(b) of the Labor Manage-
148 ment Relations Act of 1947, 29 U. S. C. § 186(b). The indictment charged that on three separate occasions the defendant, while a representative of employees who were employed in an industry affecting commerce, unlawfully, wilfully and knowingly received and accepted sums of money from the employers of such employees.

The case was tried before me without a jury, and I find that the evidence established the following facts beyond a reasonable doubt. In 1950 and 1951, the years covered by the indictment, the defendant was president of the International Longshoremen's Association (ILA) and the Atlantic Coast District of the ILA. The ILA, the Atlantic Coast District of the ILA, and the ILA's affiliated local unions were the recognized collective bargaining agents for

longshore labor in the Port of New York. These organizations bargained for longshore labor in the Port of New York through the Wage Scale Committee of the ILA and were parties to collective bargaining agreements which governed the terms and conditions of employment of longshore labor in the Port. Defendant was a member of the Wage Scale Committee and was authorized to sign and did sign the agreements in effect in 1950 and 1951.

The Wage Scale Committee of the ILA bargained with the New York Shipping Association (NYSA), an association of employers of longshore labor, and J. Arthur Kennedy & Sons, Inc. was a member of the NYSA in 1950 and Daniels & Kennedy, Inc. was a member of the NYSA in 1951. Both of these concerns were engaged in stevedoring affecting commerce[1] and their employees were members of local unions affiliated with the ILA and were employed in an industry affecting commerce. The collective bargaining agreements entered into by the ILA and the NYSA were binding on J. Arthur Kennedy & Son, Inc. (Kennedy & Son)
149 and on Daniels and Kennedy, Inc. by reason of their membership in the NYSA.

In December of each year from 1946 to 1951, James C. Kennedy, president of Kennedy & Son and of Daniels & Kennedy, Inc., gave the defendant $1,000; and in April, 1951 James C. Kennedy gave the defendant $500. On each of these occasions James C. Kennedy visited the defendant in his office at 14th Street and Eighth Avenue in New York City and gave him the money. In December, 1950 the envelope containing the money had the following message written on it: "Merry Christmas to Joseph P. Ryan from J. Arthur Kennedy & Son, Inc." In December, 1951 the message on the envelope read: "Merry Christmas to Joseph P. Ryan from Daniels & Kennedy." In April, 1951 the envelope containing the money had no message written on it.

The law which defendant has allegedly violated provides that

> "It shall be unlawful for any representative of any employees who are employed in an industry affecting commerce to receive or accept, or to agree to receive or accept, from the employer of such employees any money or other thing of value. 29 U. S. C. § 186(b)."

And it further provides that

> "Any person who wilfully violates any of the provisions of this section shall . . . be guilty of a misdemeanor. . . ." 29 U. S. C. § 186(d).

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[1] "Affecting commerce" is defined in section 101 of the Labor Management Relations Act, 1947, 29 U. S. C. § 152(7).

The defendant did not offer any evidence to controvert the proof that he had received and accepted money from James C. Kennedy. Since "employer" is defined as including "any person acting as an agent of an employer, directly or indirectly," Labor Management Relations Act, 1947, §§ 501(3), 101(2), 29 U. S. C.
150 §§ 142(3), 152(2), and James C. Kennedy was acting as an agent of Kennedy & Son and Daniels & Kennedy, Inc. when he gave the defendant money in 1950 and 1951, it is clear that the defendant received and accepted money from "the employer" of employees who were employed in an industry affecting commerce. But the defendant contends (1) that he cannot be considered to have violated 29 U. S. C. § 186(b) because he was not a "representative of . . . employees" within the meaning of the section, and (2) that even it should be decided that he was a "respresentative of . . . employees," the Government has not proved a wilful violation of section 186(b) and has therefore failed to prove that he committed a crime. 29 U. S. C. § 186(d).

Defendant's contention that he was not a "representative of . . . employees" within the meaning of section 186(b) is based on his belief that the phrase "representative of employees" as used throughout the Labor Management Relations Act of 1947 is a term of art for the collective bargaining agent for a group of employees. The defendant argues that neither he nor any other individual was the "representative" of the longshoremen who were members of the ILA, the Atlantic Coast District of the ILA, and the local unions affiliated with the ILA. In each case, he says, the union was the "representative of . . . employees."

According to the defendant, section 186 was enacted to insure that welfare funds would be administered for the benefit of union members and would not be used to further the purposes of the union or the union officers; and to limit check-off payments to labor organizations. The defendant argues that Congress intended to achieve these purposes, and did not intend to prohibit gifts to union officers from the employers of the men they represented.
151 The legislative history of section 186 does not sustain defendant's position. The provision that later became section 302(b) of the Labor Management Regulations Act, 947, 29 U.S.C. § 186 (b), was offered as an amendment to the bill by Senator Ball in behalf of himself, Senator Byrd and other Senators. See 93 Cong. Rec. 4677 (1947). A similar provision had been offered as an amendment to a bill by Senator Byrd in the preceding Congress. See 92 Cong. Rec. 4809 (1946). It had been passed but was vetoed by President Truman. So far as is material to the decision of the instant case, the Byrd amendment and the Ball amendment are similar to section 186.

Throughout the debate on the Ball amendment Senators evidenced

an awareness that section 186 would apply to payments to a union official by an employer of men whom the official represented. For example, while explaining the effect of section 186 on the floor of the Senate, Senator Taft said,

> "The amendment provides first that—
>
> It shall be unlawful for any employer to pay or deliver, or to agree to pay or deliver, any money or other thing of value to any representative of any of his employees.
>
> That is, it may be said, in a case of extortion or a case where the union representative is shaking down the employer . . ." 93 Cong. Rec. 4746 (1947).

And Senator Pepper said,

> " . . . I simply wish to state that I wonder whether it can be correctly assumed that the application of this provision is to be limited to representatives of unions. Could it not be regarded as affecting contributions made to representatives of unorganized groups, and affecting, for instance contri-
> 152 butions provided by management for picnics or in aid of baseball teams which the employees often have, and other contributions of that character. Would not all such contributions be forbidden under the terms of this provision?"

Senator Ives replied, "Presumably that is correct. . . ." 93 Cong. Rec. 4748 (1947).

Similarly, the legislative history of the Byrd amendment shows that Congress intended section 186 to apply to payments to a union official as well as to a labor organization. Thus in explaining the amendment Senator Byrd said,

> "In general the amendment prohibit payments by an employer of money or other things of value to *labor representatives and labor organizations*, but in no manner does it prohibit the payment of such things to employees directly. . . ." 92 Cong. Rec. 4891 (1946),

and

> "My amendment would prevent an employer from paying a royalty to the *representative of a union*. He would be clearly liable, under the provisions of this amendment, if he paid a royalty or other money to the *representative of a labor union*, the purpose of which was to bribe that representative. . . ." 92 Cong. Rec. 4893 (1946).[2]

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[2] See also a debate between Senator Byrd and Senator Pepper on the scope of the amendment.

"Mr. Byrd. The amendment is very clear. It prevents only the payment to a representative of employees. . . ."

"Mr. Pepper. Mr. President, is it not patent on the face of the statement, in the first place, if John L. Lewis says . . . 'We will not go back into the mines unless you provide a health fund, even jointly administered,' that that is a thing of value? Is not that something demanded under paragraph (b) of the amendment, by a representative of a labor union?

" 'It shall be unlawful for any representative of any employees.' *Does anyone doubt that John L. Lewis is representing the employees?*

. . .

" 'To demand, receive, or accept, or agree to receive or accept, from the employer of such employees any money or other thing of value.' Does anyone deny that John L. Lewis in making demand even for a health fund that will be jointly administered, is demanding something that will be of value to the employees?

. . .

"Mr. Byrd. I am offering the amendment to prevent the payment of a royalty to the *representatives of a union.*

. . .

"Mr. Byrd. There is only one justification for the Senator's suggestion, in line 8, there I used the word 'demand', which is linked with the word 'receive' and 'accept' which follow it, and if the Senator objects to that, I am perfectly willing to strike it out." 92 Cong. Rec. 4900 (1946) and see 92 Cong. Rec. pp. 4895-4897, 5040-5041 (Senator Byrd), 5180-5181 (Senator Overton), 5428 (Senators Hatch and Tunnell), 5429 (Senators Hatch and Hoey) (1946).

153 The defendant argues that this legislative history is irrelevant because the conference committee changed section 186 and Congress enacted the provision as changed by the committee and not the provision which had been discussed on the floor of the Senate. The conference committee deleted from section 186 a definition of the word "representative" which was to have applied to that section, and included "representative" among the terms which were defined for the purposes of the Labor Management Relations Act, 1947, Cf. *Legislative History of the Labor Management Relations Act, 1947*, pp. 26, 29, 283, 290 (1948). From these changes the defendant infers that Congress intended "representative of employees" to mean only the collective bargaining agent for a group of employees.

The defendant's inference is a farfetched one. The report of the

154 — conferees on the part of the House of Representatives discusses section 186 under the heading "Restrictions on Payments to Employee Representatives." It states,

> "Section 302 of the Senate amendment contained a provision making it unlawful for any employer to pay any money or thing of value to any representative of his employees employed in an industry affecting commerce, or for any such representative to accept from the employer any money or other thing of value, with certain specified exceptions. . . .
>
> . . .
>
> "The conference agreement adopts the provisions of the Senate amendment with minor clarifying changes." H. R. Rept. No. 510, Conference Report, 80th Cong., 1st Sess. 66-67 (1947).

In the light of this language I cannot agree with the defendant's contention. For if the conferees intended to give "representative of employees" the limited meaning which the defendant ascribs to it, they would not have said that they adopted the "provisions of the Senate amendment with minor clarifying changes." I therefore conclude that the defendant was a "representative of employees" within the meaning of section 186(b).

The defendant also contends that even if he were a "representative of employees" he is not guilty of a crime because the Government must prove that he "wilfully" violated section 186(b) and it has failed to do so. See *Labor Management Relations Act, 1947*, § 302(d), 29 U.S.C. § 186(d).

In my opinion a wilful violation of section 186(b) is proved if it is shown that a "representative of any employees who are employed in an industry affecting commerce" received or accepted money from the employer of such employees with knowledge (1) 155 — that he was receiving or accepting money, and (2) that the person who was giving him the money was an employer of employees that he represented. It seems clear that the defendant knew that he was receiving money in December, 1950 and in April and December, 1951. Since 1946 he had received money from James C. Kennedy under similar circumstances. The envelopes given to him in December, 1950 and December, 1951 had $1,000 written lightly in pencil in the upper righthand corner. In November 1952, Ruth M. Kennedy, an officer of the employer companies, who had planned and prepared for the payments to the defendant, testified under subpoena before the New York State Crime Commission, sitting in executive session. One week later the defendant appeared at her office. He was seeking James C. Kennedy, the

disburser of the payments. According to her testimony, which I believe trustworthy, the following took place:

"Q. What was your conversation with Mr. Ryan, please?

"A. He came in and told me that he was looking for my nephew, James C. Kennedy, and I said as a matter of fact I was looking for him myself, and he went on to say that he wanted to know from—what had been reported by us to the State Crime Commission.

"I told Mr. Ryan that I couldn't tell him anything about what had taken place at the Crime Commission because we had been, as I believe it, sworn under oath of secrecy, and he then said to me it was income tax in one way and perjury the other, and I said 'Well, why don't you just tell the truth? It is rather a serious business'—and that was it. I said I was sorry I couldn't help him and he said, 'Good-by' and left the office."

156 The evidence relating to the 1950 and 1951 transactions was sufficient to justify the conclusion that the defendant had knowingly received and accepted the money specified in the indictment.

I also believe that the evidence proves that the defendant knew that the person who was giving him money was an employer of employees that the defendant represented. It was proved that the defendant was in 1950 and 1951, and for many years prior to that, had been president of the ILA and of the Atlantic Coast District of the ILA. It was also proved that Kennedy & Son and Daniels & Kennedy, Inc., were members of the NYSA who employed longshore labor and were bound by contracts entered into by the ILA and NYSA. Furthermore, it was established that the envelopes containing the money that James C. Kennedy handed to the defendant from 1946 to 1951 (except that of April, 1951) bore the name of Kennedy & Son or Daniels & Kennedy, Inc.; and that after the defendant had discovered that James C. Kennedy had testified before the New York State Crime Commission in 1952 he came to the office of Daniels & Kennedy, Inc. and asked to see James C. Kennedy. When in addition to these facts, no person relationship is shown which would lead the defendant to expect gifts from James C. Kennedy, Kennedy & Son, or Daniels & Kennedy, Inc., the inference that the defendant knew that he was receiving money because he was a union official who represented men employed by the person who was giving him the money is the only one that can reasonably be drawn. I therefore find that the defendant knew that the person who was giving him money was an employer of employees that he represented, and that the Government has proved a wilful violation of section 186(b).

The defendant objects to section 186(b) on constitutional
157 grounds. He urges that section 186(b) is repugnant to the due process clause of the Fifth Amendment for two reasons. First, the words "any representative of any employees" are so vague and indefinite that reasonable men cannot know whether they are within the class of persons who may not engage in the described activities. Second, section 186(b) is beyond the power of Congress to enact because it is unreasonable to prohibit a person who is a union official from receiving money from a person who is an employer of the men whom the official represents just because one is a union official and the other is an employer of men whom the official represents.

The "void for vagueness" argument cannot be sustained. The defendant was not a sergeant-at-arms of a union; nor was he a president who did nothing more than preside at meetings, or an attorney who represented the union. He was an officer of the union with a high degree of discretion and responsibility who was actively concerned with the relations between his union and the companies from which he received the money. He was president of the ILA and the Atlantic Coast District of the ILA, and as a member of the Wage Scale Committee he represented the employees who were members of these and affiliated unions in the collective bargaining process. Under these circumstances it would be idle speculation for this Court to predict whether a sergeant-at-arms, a president who does nothing but preside at meetings, or an attorney of the union could be considered a "representative of employes" under section 186(b). If such questions are presented under section 186(b), the Court can then rule on them.

That there may be marginal cases presenting difficulties of factual
158 demarcation is not sufficient ground for striking down a statute for ambiguity. *United States* v. *Petrillo*, 332 U. S. 1 (1947); *Robinson* v. *United States*, 324 U. S. 282 (1945). The underlying principle is that no man shall be held criminally responsible for conduct which he could not reasonably understand to be proscribed. *Jordan* v. *DeGeorge*, 341 U. S. 223 (1951). The Constitutional requirement of definiteness is fulfilled where the statute gives a person of ordinary intelligence fair notice that his contemplated conduct is forbidden by its terms. *United States* v. *Harriss*, 347 U. S. 612 (1954). And if the statute is plainly directed to a general class of cases, it will not be struck down as vague even though marginal cases pose questions of doubt. *United States* v. *Harriss*, *supra* at 618.

Here the defendant was clearly a representative of the employees described in the statute. They were employed by an in-

dustry affecting commerce." There is no statutory magic to the term "representative". It is a word of common usage. I have already indicated why this term was of general import and not limited, as the defendant has argued, to the judicial entity recognized for collective bargaining purposes. And by adding the word "any" before "representative", the draftsman broadened the scope as far as could be, see *Ex Parte Collett*, 337 U. S. 55, 58 (1949), subject only to the specific exceptions defined by the statute itself in the following subsection, Section 186(c).

The defendant was one of the most important individuals representing these employees. He acted for and in behalf of the employees, whose employer was the disburser of the funds he received and accepted, in matters involving discretion and responsibility. He was clearly within the terms of section 186(b). Any reasonable person should have so understood.

159 Defendant's argument that section 186(b) is beyond the power of Congress to enact because it is unreasonable is without merit. The Court does not have the power to decide whether an act of Congress is or is not reasonable and to strike it down if it believes that it is unreasonable. The Court can strike down an act of Congress only when it can say that there was no reasonable basis for the act. See *United States* v. *Carolene Products Co.*, 304 U. S. 144, 152 (1938).

I cannot make such a finding with respect to section 186(b). I cannot say that it was unreasonable for Congress to believe that the flow of commerce would be burdened or obstructed if the effectiveness of collective bargaining were impaired; and that its effectiveness would be seriously impaired if representatives of employees received or accepted money or things of value from the employers of the workers whom they represented. Indeed, I believe that the right of employees to bargain collectively, recognized and protected by the *Labor Management Relations Act, 1947* is safeguarded by section 186(b) because removal of the opportunity for personal profit between the employer and the employee representative tends to preserve the integrity of the collective bargaining process. As such it bears a reasonable relationship to the avoidance of industrial strife and is not violative of the due process clause of the Fifth Amendment. See *National Labor Relations Board* v. *Jones & Laughlin Steel Corp.*, 301 U. S. 1, 41-43 (1937).

Finally, the defendant attacks the validity of section 186(b) as beyond the power of Congress to enact under its power over interstate and foreign commerce. There is no justification for this argument.

The commerce power has been held sufficiently broad to war-

rant Congressional intervention in the field of labor manage-
160 ment relations. *National Labor Relations Board* v. *Jones & Laughlin Steel Corp., supra.* Mr. Chief Justice Hughes put the matter succinctly in this case, at pp. 41-42:

> "* * * When industries organize themselves on a national scale, making their relation to interstate commerce the dominant factor in their activities, how can it be maintained that their industrial labor relations constitute a forbidden field into which Congress may not enter when it is necessary to protect interstate commerce from the paralyzing consequences of industrial war? We have often said that interstate commerce itself is a practical conception. It is equally true that interferences with that commerce must be appraised by a judgment that does not ignore actual experience."

The preamble to the very Act of Congress here involved makes manifest the legislative intent to regulate labor management relations in order to prevent obstructions to the "free flow of commerce." The "Findings and Declarations of Policy" set forth in section 101 of the *Labor Management Relations Act, 1947*, 29 U. S. C. § 141 et seq. read as follows:

> "Experience has further demonstrated that certain practices by some labor organizations, their officers, and members have the intent or the necessary effect of burdening or obstructing commerce by preventing the free flow of goods in such commerce through strikes and other forms of industrial unrest or through concerted activities which impair the interest of the public in the free flow of such commerce. The elimination of such practices is a necessary condition to the assurance of the rights herein guaranteed."

161 It has already been indicated that section 186(b) cannot be said to be an unreasonable means of achieving the ends of industrial peace and facilitating the free flow of commerce. It follows, therefore, that this provision is not open to attack on the ground that Congress was powerless to enact it in the exercise of its power over interstate and foreign commerce. Cf. *American Communications Association* v. *Douds*, 339 U. S. 382, 390-393 (1950).

The defendant is found guilty as charged under Counts 1, 2 and 3 of the indictment and is directed to surrender forthwith for the purpose of pre-sentence investigation. Sentence will be imposed on February 1, 1955, at 10:00 A. M.

January 24, 1955.

EDMUND L. PALMIERI,
U. S. D. J.

162 IN UNITED STATES DISTRICT COURT

JUDGMENT—February 1, 1955

On this 1st day of February, 1955, came the attorney for the government and the defendant appeared in person and by counsel.

163-165 *Judgment*

It is Adjudged that the defendant has been convicted upon his plea of not guilty, and a finding of guilty by the Court (jury having been waived) of the offense of unlawfully, wilfully and knowingly receiving and accepting money from the employer of employees who were employed in industry affecting commerce, while representing said employees. Title 29, Section 186 (b) (d) U. S. Code as charged in three counts and the Court having asked the defendant whether he has anything to say why judgment should not be pronounced, and no sufficient cause to the contrary being shown or appearing to the Court,

It is Adjudged that the defendant is guilty as charged and convicted.

It is Adjudged that the defendant is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of SIX (6) months on each of counts 1-2-3 to run concurrently with each other and Fined the sum of $2,500. to cover all three counts. Defendant ordered to stand committed until fine shall be paid, or he is otherwise discharged according to law. Execution of prison sentence and payment of fine stayed pending appeal. Bail bond ordered continued during such stay.

It is Ordered that the Clerk deliver a certified copy of this judgment and commitment to the United States Marshal or other qualified officer and that the copy serve as the commitment of the defendant.

EDMUND L. PALMIERI,
United States District Judge.

Filed, U. S. District Court, S. D. of N. Y., Feb. 1, 1955.

166 United States Court of Appeals
For the Second Circuit

October Term, 1954

No. 322

Docket No. 23546

Argued May 11, 1955

UNITED STATES OF AMERICA, APPELLEE

v.

JOSEPH P. RYAN, DEFENDANT-APPELLANT

OPINION—July 1, 1955

Before: L. HAND, SWAN and FRANK, *Circuit Judges.*

Appeal from a judgment of the United States District Court for the Southern District of New York, entered by Judge Palmieri, after a trial without a jury. Reversed.

J. Edward Lumbard (Arnold Bauman, George H. Bailey, of counsel) for appellee.

Waldman & Waldman (Louis Waldman, Seymour M. Waldman and Martin Markson, of counsel) for appellant.

Defendant-Appellant, Joseph P. Ryan, President of the International Longshoremen's Association (hereafter called ILA) was indicted, under 29 U.S.C. Section 186(b) and (d)—61 Stat. 302(b) and (d)—on three counts, in that, on three separate occasions, he unlawfully, wilfully and knowingly received sums in the aggregate of $2,500, from corporations employing members of the ILA.
167 With the consent of defendant, the case was tried without a jury. There was evidence that, on three occasions during 1950 and 1951, when defendant was president of the ILA and its Atlantic Coast District, he was visited by James C. Kennedy, president of Daniels & Kennedy, Inc. and of J. Arthur Kennedy & Son, Inc., and was given envelopes containing money. There was also evidence that the two corporations headed by Kennedy employed longshoremen who were members of the ILA. The trial judge found that the defendant knew he was receiving money, knew that he was receiving it from one who employed workers represented by the union of which he was president, and knew he was receiving it because he was a union official. The judge, holding defendant guilty on all counts, sentenced him to imprisonment for six months on each

count (the sentences to run concurrently) and fined him $2,500. Defendant has appealed.

61 Stat. 136-162. The Labor Management Relations Act (the so-called Taft-Hartley Act) was enacted in 1947. Section 101 of that Act amended the National Labor Relations Act originally enacted in 1935. Section 2 of the National Labor Relations Act, as thus amended, reads in part as follows: "When used in this Act . . . (4) The term 'representatives' includes any individual or labor organization." (61 Stat. 137).[1]

Section 501 of the 1947 Act (61 Stat. 161) reads in part as follows: "When used in this Act . . . (3) The terms 'commerce,' 'labor disputes,' 'employer,' 'employee,' 'labor organization,' '*representatives*,' 'person,' and 'supervisor' shall have the same
168 meaning as when used in the National Labor Relations Act as amended by this Act."[2]

Section 302 of the 1947 Act (61 Stat. 157-158) reads as follows:

"*Restrictions on Payments to employee representatives.*

"(a) It shall be unlawful for any employer to pay or deliver, or to agree to pay or deliver, any money or other thing of value to any representative of any of his employees who are employed in an industry affecting commerce.

"(b) It shall be unlawful for any representative of any employees who are employed in an industry affecting commerce to receive or accept, or to agree to receive or accept, from the employer of such employees any money or other thing of value.

"(c) The provisions of this section shall not be applicable (1) with respect to any money or other thing of value payable by an employer to any representative who is an employee or former employee of such employer, as compensation for, or by reason of, his services as an employee of such employer; (2) with respect to the payment or delivery of any money or other thing of value in satisfaction of a judgment of any court or a decision or award of an arbitrator or impartial chairman or in compromise, adjustment, settlement or release of any claim, complaint, grievance or dispute in the absence of fraud, or duress; (3) with respect to the sale or purchase of an article or commodity at the prevailing market price in the regular course of business; (4) with respect to money deducted from the wages of employees in payment of membership dues in a labor organization: *Provided*, that the employer has received from each employee, on whose account such deductions are made, a written assignment which shall not be irrevocable for a period of more than one year, or beyond the termination date of the applicable collective agreement, whichever occurs sooner; or (5) with respect to money or other thing of value paid to a trust fund estab-

lished by such representative, for the sole and exclusive benefit of the employees of such employer, and their families and dependents (or of such employees, families and dependents jointly with the employees of other employers making similar
169 payments and their families and dependents): *Provided*, that (A) such payments are held in trust for the purpose of paying, either from principal or income or both for the benefit of employees, their families and dependents, for medical or hospital care, pensions on retirement or death of employees, compensation for injuries or illness resulting from occupational activity or insurance to provide any of the foregoing, or unemployment benefits or life insurance, disability and sickness insurance, or accident insurance; (B) The detailed basis on which such payments are to be made is specified in a written agreement with the employer, and employees and employers are equally represented in the administration of such fund, together with such neutral persons as the representatives of the employers and the representatives of the employees may agree upon and in the event the employer and employee groups deadlock on the administration of such fund and there are no neutral persons empowered to break such deadlock, such agreement provides that the two groups shall agree on an impartial umpire to decide such dispute, or in event of their failure to agree within a reasonable length of time, an impartial umpire to decide such dispute shall, on petition of either group, be appointed by the district court of the United States for the district where the trust fund has its principal office, and shall also contain provisions for an annual audit of the trust fund, a statement of the results of which shall be available for inspection by interested persons at the principal office of the trust fund and at such other places as may be designated in such written agreement; and (C) such payments as are intended to be used for the purpose of providing pensions or annuities for employees are made to a separate trust which provides that the funds held therein cannot be used for any purpose other than paying such pensions or annuities.

"(d) Any person who willfully violates any of the provisions of this section shall, upon conviction thereof, be guilty of a misdemeanor and be subject to a fine of not more than $10,000 or to imprisonment for not more than one year, or both.

"(e) The District Courts of the United States and the United States Courts of the Territories and possessions shall have jurisdiction, for cause shown, and subject to the provisions of Section 17 (relating to notice to opposite party) of the Act entitled 'an Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes,' approved

October 15, 1914, as amended (U.S.C., title 28, sec. 381), to restrain violations of this section, without regard to the provisions of section 6 and 20 of such Act of October 15, 1914, as amended (U.S.C., title 15, sec. 17, and title 29, sec. 52), and the provisions of the Act entitled 'An Act to amend the Judicial Code and to define and limit the jurisdiction of courts sitting in equity, and for other purposes,' approved March 23, 1932 (U.S.C., title 29, secs. 101-115).

"(f) This section shall not apply to any contract in force on the date of enactment of this act, until the expiration of such contract, or until July 1, 1948, whichever occurs first.

"(g) Compliance with the restrictions contained in subsection (c)(5)(B) upon contributions to trust funds, otherwise lawful, shall not be applicable to contributions to such trust funds established by collective agreement prior to January 1, 1946, nor shall subsection (c)(5)(A) be construed as prohibiting contributions to such trust funds if prior to January 1, 1947, such funds contained provisions for pooled vacation benefits."[3]

FRANK, Circuit Judge:

1. Defendant correctly asserts that there was no evidence of extortion (or the like). Accordingly, he argues thus: Previous to the enactment of Section 302(b), extortion had already been covered by the so-called Anti-Racketeering Act, 18 U.S.C. 1951; section 302(b) should not be construed to include the receipt of money or property, absent extortion, since then it would be, or come close to being, void for vagueness, and a court should, if possible, avoid an interpretation of a statute that would make it void or put it on the edge of the unconstitutional.

Defendant also argues that Section 302(b) should not be construed to include representatives of union because then it would overlap state statutes. Here defendant cites Jerome v. United States, 318 U.S. 101, 104-105, where the court said: "Since there is no common law offense against the United States . . . , the administration of criminal justice under our federal system has rested with the states, except as criminal offenses have been explicitly prescribed by Congress. We should be mindful of that tradition in determining the scope of federal statutes defining offenses which duplicate or build upon state law. In that connection, it should be noted that the double-jeopardy provision of the Fifth Amendment does not stand as a bar to federal prosecution though a state conviction has already been obtained . . . . That consideration gives additional weight to the view that where Congress is creating offenses which duplicate or build upon state law, courts should be reluctant to extend the deferred offenses beyond the clear requirements of the statute."

We have not found it necessary to consider either of those contentions, since we rest our decision on another ground. 3. Defendant's principal argument is that he was not a "representative of any employees" within the meaning of Section 302(b). His reasoning is as follows:

> Section 501(3) provides that "when used in this Act, the term 'representative' is to have the same meaning as when used in the National Labor Relations Act as amended by this Act." Section 2 of the National Labor Relations Act, as thus amended, provides that, when used in that amended Act, the "term
> 172 'representative' includes any individual or labor organization."
>
> Throughout the NLRA, as thus amended, "representative" is used, with reference to a representative of employees, as a word of art, to mean solely a labor organization or an individual (or individuals) designated by a majority of the employees, in an appropriate unit, as their exclusive bargaining representative.
>
> This interpretation of "representative" in Sec. 302(b) is in complete accord with the primary purpose of Congress in enacting Sec. 302 as an entirety, i.e., to render unlawful the creation of union welfare funds unless restricted as provided in Sec. 302(c)(5).
>
> In the case at bar, a union, ILA, was the exclusive bargaining representative. Consequently, here Sec. 302(b) could apply to the union only, not to defendant who was but a representative of the representative, i. e., of the union.
>
> Accordingly, defendant did not violate Subsection (302(b).

The government, on the other hand, contends that "representative" in Subsection 302(b) must be given its everyday, commonplace meaning; that, therefore, it includes a representative of a union; and that defendant comes within that definition. If subsection 302(b) stood alone, that contention would be highly persuasive.

173 That subsection, however, is not an island but part of a statutory continent. To understand the words "representative of any employees" in subsection (b) of Section 302, we must look to Section 501(3) which instructs us that "representative" in Section 302(b) has the same meaning "as when used in the amended National Labor Relations Act." In Section 2(4) of that Act, we find the "term 'representative' includes any individual or labor organization." We thereby learn what "representative" includes. To understand what it means, with reference to a "representative of any employees," we must heed Section 501(3) and turn to the

many sections of the amended NLRA where "representative" is so used.[5] We discover that there invariably it means a "representative" selected by a majority of the employees, in an appropriate unit, as their exclusive bargaining representative. (Only once is it used otherwise, i.e., in Section 2(1) where, defining "person," the Act includes a "legal representative".) The question then arises whether an "individual" can be an exclusive bargaining representative. Clearly he can. The Labor Board has so interpreted the Act.[6]

We see nothing in the exception clauses of Section 302(c) at all at odds with defendant's contention: Clauses (2), (4) and (5) obviously are not. Clauses (1) and (3) apply to an individual employee who is also an exclusive bargaining agent—and thus himself a "representative." We think it significant that when, in the 1947 Act, Congress wanted to refer to individuals acting for a union, it spoke of them not as "representatives" of a "labor organization," but as "agents" of such an organization; see Section 8(b)—61 Stat. 141—of the amended N.L.R.A., a subsection added by the 1947 Act.

174

The government argues that, in every instance where "representative" is used in the amended N.L.R.A. to designate a "representative" of employees, the word is qualified by the word "bargaining" or by the phrase "subject to Section 9 (a)." That is not true: Section 8(b)(4)(B) and Section 8(d)—61 Stat. 141-142—use the words "representative of his employees" or "representative of the employees" without any qualification, and Section 1 (61 Stat. 137 and Section 7 (61 Stat. 140) speak of "representatives of their own choosing."

The following further suggestion is advanced: (1) As defined in Section 2(5) of the N.L.R.A.,[6a] "labor organization" can be in-

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[5] See Sections 1, 2, 7, 8a(3), 8(a)(5), 8(b), 8(b)(4), 8(d), 9(a), 9(b), 9(c)(1) and 9(g).

[6] See The Robinson-Ransbottom Pottery Company, 27 NLRB 1093 (1940); The Louisville Sanitary Wiper Company, Inc., 65 NLRB 88 (1945). These cases arose under the NLRA before its amendment in 1947; but that amendment did not change the statutory definition of "representative."

[6a] This subsection reads as follows: "The term 'labor organization' means any organization of any kind, or any agency or employee representation committee or plan, in which employees participate and which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work."

terpreted to cover not only an exclusive bargaining agent but also either any group or any individual whatever to whom any employees give authority to deal with their employer "concerning grievances, labor disputes, wages, rates of pay, hours of employment or conditions of work." (2) Accordingly, since Section 2(4) provides that "representatives" include "any individual or labor organization," an individual who is not an exclusive bargaining agent can be a "representative."

We reject that suggestion for these reasons: (1) It involves a straining of the language of Section 2(5) to have the term "labor organization," which normally imports a collective body or group, cover an individual. (2) More important, if "labor organ-
175 ization" includes an individual, then Section 2(4) uses the word "individual" redundantly when it says that "representatives" include "any individual or labor organization." For the suggested interpretation of Section 2(4) would cause it to read, in effect, thus: "The term 'representatives' include (a) an individual or (b) an individual or a group having authority from any employees to deal with their employer."

3. The government makes much of the legislative history. But, so far as it illuminates, it tends strongly to support defendant's contention. This appears from the following:

A fore-runner of the 1947 Act was the so-called Case Bill, H.R. 4908, reported on the floor of the House of Representatives on January 28, 1946 (92 Cong. Rec. 490). After this bill passed the House, on February 7, 1947 (Cong. Rec. 1069, 1118), the Senate Committee reported it on April 15, 1946. On May 16, 1946, Senator Byrd submitted an amendment (92 Cong. Rec. 4809) entitled "Restrictions on Payments to Labor Organizations." This Byrd amendment (except for the definition of "representative" noted infra) is substantially the same as the present Section 302. The Case Bill, including the Byrd amendment, was passed by Congress, but was vetoed by the President, and Congress failed to over-rule the veto.

176 One year later, as part of the comprehensive labor bill then under consideration, an amendment similar to the Byrd amendemnt was introduced in the House but failed of passage. The Senate Labor Committee reported out the comprehensive labor bill without any such amendment. However, five members of that Committee, including Senators Taft and Ball, filed a Supplemental Report (to the Committee's report) in which they urged an amendment quite like the Byrd amendment of the previous year. On May 7, 1947, Senator Ball, for himself and three other Senators, introduced the amendment on the Senate Floor (93 Cong. Rec. 4667), and it was adopted as Section 302 of the Senate bill.

Like the Byrd amendment, Section 302, as adopted by the Senate, included the following subsection (g):

> "For the purposes of this section, the term 'representative' means any labor organization which, or any individual who, is authorized or purports to be authorized to deal with an employer, on behalf of two or more of his employees, concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work; and for the purposes of section 301 includes any other organization or fund of which some of the officers are representatives or are members of a labor organization or are elected or appointed by a representative."

This definition was susceptible of the interpretation that "representative" included a union official. Senator Ball, explaining that paragraph, (g), said (93 Cong. Rec. 4678): "Subsection (g) is simply a definition of the term 'representative' as used in the section, which is required to be somewhat different from the definition of 'representative' in the National Labor Relations Act."
177

But the Joint Conference Committee, which ironed out the differences between the House and Senate bills, significantly omitted that definition and, instead, added the word "representative" to the list of terms defined by Section 501(3) as having the same meaning as when used in the amended N.L.R.A. In this form, the bill passed both houses of Congress and was enacted over a Presidential veto.

Before the Joint Conference Committee made that change, Senator Ives, in debate, had said: ". . . I . . . should like to point to section (b) . . . . I wish to inquire whether that could be construed in any way as affecting Christmas presents or birthday presents or anything of that type. The language is rather broad, and it appears to me to be vague." (93 Cong. Rec. 4748). Senator Ives later was a Senate member of the Joint Conference Committee which made the change.

Most of the Congressional debates and Committee reports concerning Section 302, and concerning the Byrd amendment in the previous Congress, were devoted to the subject of the regulation of union welfare funds. They show that this section was prompted by the demand of the United Mine Workers Union for an employer contribution to a welfare fund of 10¢ per ton of coal, a fund administered by the union alone with no restrictions on its discretion. [7]

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[7] Also discussed was a limitation on check-offs to labor organizations.

The following statements from the debates on the Ball amendment are illustrative:

178 (Senator Ball): "Mr. President, the pending amendment . . deals with so-called welfare funds, which are becoming increasingly prominent in negotiations between unions and employers. . . . Mr. President, the sole purpose of the amendment is not to prohibit welfare funds, but to make sure that they are legitimate trust funds. . . ." (93 Cong. Rec. 4678).

(Senator Byrd): "It [the amendment] has a specific purpose, which is to prohibit the labor unions from requiring welfare funds to be paid into the treasuries of the labor unions." (93 Cong. Rec. 4678).

(Senator Taft): "The occasion of the amendment was the demand by the United Mine Workers of America that a tax of 10¢ a ton be levied on all coal mined, and that the tax levied be paid into a general welfare fund to be administered by the union for practically any purpose the union considered to come within the term 'welfare.' . . . The purpose of the amendment is to require that the fund shall be established in definite detailed form. . . . The purpose is to prevent the abuse of welfare funds. . . . This amendment is, in effect, a provision to prevent the abuse of the right to establish such funds by collective bargaining. . . ." (93 Cong. Rec. 4746-47).

Sen. Rep. 105 on S. 1126, Supplemental Views, p. 52 (Senators Taft, Ball, Donnell, Jenner, H. Alexander Smith): "Limitation on Abuse of Welfare Funds. . . . The necessity for the amendment was made clear by the demand made last year on the part of the United Mine Workers. . . ."

179 The government points to a few isolated expressions in the Supplemental Report in 1946, and during the debates in 1946 and 1947,[8] indicating that Section 302(b) may have been intended (1) to apply to union representatives and (2) to cover extortion.[9] Those relative to "extortion" can be read as characterizing such demands on employers as those made by the United Mine Workers for the establishment of unregulated union trust funds. Thus when Senator Taft (93 Cong. Rec. 4746) mentioned "a case of extortion or a case where the union representative is shaking down the

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[8] Many of them emanated from Senators or witnesses interested in defeating Section 302.

[9] The Supplemental Report (1946) said: "The amendment makes extortion illegal."

Senator Taft in 1947 (93 Cong. Rec. 4746) spoke of "a case of extortion or a case where the union representative is shaking down the employer."

employer," the context suggests that he had in mind the alleged practice of some unions of bargaining for their own benefit rather than for the benefit of the employees they represented. These unions would exert marked pressure to gain employer contributions to an uncontrolled fund; it was said that such funds would then be used as union "slush" or strike funds. The grant of such employer contributions, it was urged, would be accepted by the union as the price of a collective bargaining agreement in lieu of other benefits which the workers should have received. This fear was expressed by Senator Ball, in introducing his amendment, as follows:

> "Mr. President, the sole purpose of the amendment is not to prohibit welfare funds, but to make sure that they are legitimate trust funds, used actually for the specified benefits to the employees of the employers who contribute to them and that they shall not degenerate into bribes. . . . I have heard of many cases in which unions have even relinquished wage demands in order to secure a welfare fund with a percentage of the payroll paid into the welfare fund established, and employers have frequently agreed to that procedure." (93 Cong. Rec. 4678 (1947)).

180-182 In any event, the significant fact is that all those expressions occurred before the Joint Conference Committee had deleted paragraph (g) of Section 302 (above quoted) separately defining "representatives," and had substituted the definition now contained in Section 501.[10]

Since defendant was not a "representative" within Section 302(b) as we interpret it, we reverse with directions to dismiss on the merits.

Reversed.

183 HAND, Circuit Judge (dissenting).

As my brothers say, §142(3) of Chapter 49, U.S. Code; which is part of Subchapter I of the "Labor-Management Relations Act, 1947," defines the term, "representative," by reference

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[10] The Joint Conference Committee reported that Section 302 of the Senate bill "was adopted with minor clarifying changes." We see no conflict between the significance we have attached to the changes made by that Committee and the report's description of those changes as "minor." For, in relation to the general purpose of the section—the regulation of union welfare funds—the changes are of little import, and only if the Section is applied to other kinds of payments do they assume importance.

to its use in Subchapter II—the National Labor Relations Act. It also defines "labor organizations" in the same way. Although the word, "representative," is repeatedly used in Subchapter II, I can find no definition of it anywhere except that §152(4) says that it includes "any individual or labor organization"; from which it follows that the Act understands that "representatives" of employees may be other than a "labor organization." Section 152(5) defines a "labor organization" as "any organization of any kind" (which I take to require a group of individuals) "or any agency or employee representation committee or plan in which employees participate and which exists for the purpose in whole or in part of dealing with employers, concerning grievances, labor disputes, wages, rates of pay, hours of employment or conditions of work." I should suppose that, read as it should be as in contrast to "any organization of any kind," this last language would include an individual to whom employees give authority to deal with their employer. Therefore I cannot see any escape from saying that a single person may be a "labor organization"; and, if so, then there may be "individuals" who are "representatives" of employees and yet who are not authorized to negotiate with employers. Hence, I can see no reason for denying what to me is the natural meaning of "representative," which would cover any official, or at any rate the president, of a union. Of course §186 might still be confined to
184 payments made into the union treasury, but that must be for other reasons than that they are payments to a "representative." I of course agree that the section does cover payments into the union treasury (subsections (c)(4) and (c)(5) prove that), but the accused must go further, and does; for he argues that the section covers no payments but those made in the course of negotiation and to a bargaining agent of the union for the union. But I start with the premise, that, so far as concerns definitions, there is no reason why we should not understand the word in its ordinary sense; and it is certainly irrelevant that the Act uses it in most instances—for example, in §158(d)—in a limited sense.

However, I go further, because I find evidence in subsection (c) that it does not exclude union officials, though they are not engaged in bargaining. That subsection is the provision that excepts payments which without it would fall within subsections (a) and (b). Subsections (c)(4) and (c)(5) are indeed confined to payments made to a union, and I think that the same is true of subsection (c)(2), although that is not quite so certain. On the other hand subsections (c)(1) and (c)(3) presuppose that §186 covers payments into the pocket of a union official for his own use; because, since, as I have just said, the purpose of subsection (c) is to state exceptions to the preceding subsections (a) and (b), the payments that subsection (c) covers would fall within (a) and (b) except

for the exception. Hence, subsections (a) and (b) do cover payments not made into the union treasury, but directly to a
185 "representative," who need not himself have any authority whatever to negotiate for the union. The accused answers that these subsections are only to protect those, who may be negotiating for the union, when they take their wages or have an ordinary market transaction with the employer. So far as the "representatives" are only the bargaining agents of a union, that construction makes the subsections only cautionary, and does not answer the objection that, not only are they called exceptions, but they are indiscriminately mixed with indubitable exceptions. On the other hand, if they are treated as true exceptions (as they may be if confined to cases where the individual negotiators are themselves the union) although the formal difficulty is avoided, the occasions on which the subsections would apply are so much reduced that it is most unlikely that Congress would have thought it worth while to provide for them. It must very rarely be true that one or two of three individuals are in fact a "labor organization"; and it is substantially impossible, I submit, that Congress would have deemed the possible accumulation of the union funds of such "labor organizations" an appreciable evil. For the foregoing reasons I do not think that there is the least textual reason to confine §186 to payments made to union "representatives" into the union treasury as a result of bargaining negotiations.

As I have said, that was indeed one of the objects of the Act, and it was particularly present in the mind of Congress at the time, for in 1947 the "Mine Workers Union" was attempting
186 to collect a large "war chest." But that does not mean that prevention of such accumulations was the only object of the Act. Moreover, in order to affirm the conviction it is not necessary to suppose that §186 was directed against the bribery of union officials, although, if I am right, it certainly does cover bribery. (Incidentally, if bribery had been the target, the penalty would almost certainly have been made more than a year's imprisonment.) An altogether adequate purpose, and one which does not involve the textual difficulties I have discussed, is that in addition to preventing employers from helping to fill a union's "war chest," Congress wished to prevent employers from tampering with the loyalty of union officials, and disloyal union officials from levying tribute upon employers. The first was the situation at bar; the employer did not bribe the accused; it did what has been done, time out of mind, when one person, knowing that he is likely to have continuous dealing with another, in which the second person will be acting as a fiduciary, wishes to insure a friendly approach to the fiduciary; and makes him presents or does him favors, or in other and less palpable forms tries to turn the edge of his

allegiance. Although §186 deals only with the grosser forms of this evil, it presupposes a more than ordinary fiduciary defection. A union official has a double loyalty: first, he owes it to the members of his union, who have chosen him to represent them; next, he owes it to those employees, who are not members, but in favor of whom the law has nevertheless imposed on him an equal duty.

Surely, it was altogether likely that Congress should wish
187 to put an end to such abuses by both parties—the unions and the employers.

Last is the question of the history of the section's passage through Congress. The principal discussion was indeed about contributions to a union's treasury; and that was true as well of the "Case Bill," —the predecessor of the Act before us—as of the Act itself. The absence of much discussion about preventing the kind of offence here prosecuted, seems to me not at all surprising; there could have been no opposition to it, except that in fact made: it might cover innocent payments. Besides, the question here at issue did not wholly escape notice. Take, for example, what Senator Taft said about §186(a): "That is, it may be said, in a case where the union representative is shaking down the employer." Or consider Senator Ives's inquiry whether § 3(b) "could be construed in any way as affecting Christmas presents, birthday presents or anything of that type." Both he and Senator Pepper voted against the bill, presumably because they thought that for this reason it went too far. I do not forget that the section defining "representative," was at that time more specific than §142(3), which eventually supplanted it in conference; but the amendment makes rather against the accused than in his favor, if we treat subsections (4) and (5) of §152 as incorporated in §142(3). For, although the supplanted section did contain the word "individual," as well as "labor organization," it limited it to an "individual" who was, or claimed to be, authorized to deal with an employer; and §152(4) does not do so, as I have said.

188 However, even if the debates threw more light than they do on the meaning of the words, I should hesitate to accept them as an authoritative gloss. It is one thing to look for that purpose to the reports of one or both of the Houses of Congress, for it is not unreasonable to believe that those members, who are not content to let the words speak for themselves, may have relied upon the report as authoritative; and in any event that is well settled law.* On the other hand, although it is true that courts have repeatedly mentioned the debates that attended the passage of a bill as relevant to its interpretation, the decisions are so much at variance that I find it impossible to extract any safe principle. The words of the sponsor of a bill are presumptively entitled to be considered, * * although it is impossible to know how far those

who voted for it may have acted on the faith of them; but the remarks made in general debate are not to count. * * *

189 There does indeed remain the question raised by Senator Ives and Senator Pepper: i.e. whether § 186 forbids a Christmas present to a union official who chances to be a friend, or even a relative, of the employer. To draw lines is always difficult; and the one sure way to miss the meaning of a statute is to read the words out of their context and as you find them in the dictionary. Nearly every statute has its penumbre, and this one is not an exception; but it would be most unreasonable to defeat a part of its purpose, because there is no *a priori* rule for deciding when a payment was purely donative, and when it was actuated by the prospect of possible benefits to come.

As my view is not to prevail, I shall not discuss the other objections that the accused raises, except to say that I have considered them, and that they have not convinced me that any error was committed that would justify a reversal. I would affirm the conviction.

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* Binns v. United States, 194 U.S. 486, 495
Lapina v. Williams, 232 U.S. 78, 90
United States v. St. Paul M. & M. Ry., 247 U.S. 310, 318
Duplex Printing Press Co. v. Deering, 254 U.S. 443, 474; 475
Wright v. Vinton Branch, 300 U.S. 440, 463, 464
Schwegmann Bros. v. Calvert Distillers Corp., 341 U.S. 384, 394, 395

** United States v. St. Paul M. & M., supra (247 U.S. 310, 318)
Duplex Printing Press Co. v. Deering, supra (254 U.S. 443, 474, 475)
McCaught v. Hersey, 283 U.S. 488, 493, 494
United States v. Great Northern Ry., 287 U.S. U.S. 144, 154, 155
Wright v. Vinton Branch, supra (300 U.S. 440, 463, 464)
Schwegmann Brothers v. Calvert Distillers Corp., supra (341 U.S. 384, 394, 395)

*** United States v. Trans-Missouri Freight Association, 166 U.S. 290, 318, 319
Dunlap v. United States, 173 U.S. 65, 75
Lapina v. Williams, supra (232 U.S. 78, 90)

190 United States Court of Appeals for the Second Circuit

UNITED STATES OF AMERICA, PLAINTIFF-APPELLEE

v.

JOSEPH P. RYAN, DEFENDANT-APPELLANT

JUDGMENT—July 1, 1955

Appeal from the United States District Court for the Southern District of New York.

This cause came on to be heard on the transcript of record from the United States District Court for the Southern District of New York, and was argued by counsel.

On consideration whereof, it is now hereby ordered, adjudged, and decreed that the judgment of said District Court be and it hereby is reversed and action remanded with directions to dismiss on the merits in accordance with the opinion of this Court.

/S/ A. DANIEL FUSARO,
Clerk.

191 Clerk's Certificate to foregoing transcript omitted in printing.

192 SUPREME COURT OF THE UNITED STATES

ORDER ALLOWING CERTIORARI.—Filed October 17, 1955

The petition herein for a writ of certiorari to the United States Court of Appeals for the Second Circuit is granted. The case is transferred to the summary calendar.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

Mr. Justice Harlan took no part in the consideration or decision of this application.

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JUL 29 1955
HAROLD B. WILLEY, Clerk

No. 281

In the Supreme Court of the United States

OCTOBER TERM, 1955

UNITED STATES OF AMERICA, PETITIONER

v.

JOSEPH P. RYAN

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

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In the Supreme Court of the United States

OCTOBER TERM, 1955

No. —

UNITED STATES OF AMERICA, PETITIONER

v.

JOSEPH P. RYAN

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

The Solicitor General, on behalf of the United States, prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Second Circuit, entered in the above case on July 1, 1955.

OPINIONS BELOW

The majority and dissenting opinions in the Court of Appeals (App., *infra,* pp. 3a–25a) have not yet been reported. The opinion of the District Court (R. 147–161), is reported at 128 F. Supp. 128.

JURISDICTION

The judgment of the Court of Appeals was entered on July 1, 1955 (App., *infra,* p. 26a). The jurisdiction of this Court is invoked under 28 U. S. C. 1254 (1).

QUESTION PRESENTED

Whether respondent, the president of the International Longshoremen's Association, which has been designated by the longshore laborers of the Port of New York as their bargaining agent, is a "representative" of employees within the meaning of Section 302 (b) of the Labor Management Relations Act of 1947, which makes it unlawful for "any representative of any employees" to receive money from the employer of such employees.

STATUTES INVOLVED

The Labor Management Relations Act of 1947 (the so-called Taft-Hartley Act), 61 Stat. 136, provides in part:

Restrictions on payments to employee representatives

SEC. 302 [29 U. S. C. 186]. (a) It shall be unlawful for any employer to pay or deliver, or to agree to pay or deliver, any money or other thing of value to any representative of any of his employees who are employed in an industry affecting commerce.

(b) It shall be unlawful for any representative of any employees who are employed in an industry affecting commerce to receive or accept, or to agree to receive or accept, from the employer of such employees any money or other thing of value.

(c) The provisions of this section shall not be applicable (1) with respect to any money or other thing of value payable by an employer to any representative who is an employee or former employee of such employer, as compensation for, or by reason of, his services as an employee of such employer; (2) with respect to the payment or delivery of any money or other thing of value in satisfaction of a judgment of any court or a decision or award of an arbitrator or impartial chairman or in compromise, adjustment, settlement or release of any claim, complaint, grievance, or dispute in the absence of fraud or duress; (3) with respect to the sale or purchase of an article or commodity at the prevailing market price in the regular course of business; (4) with respect to money deducted from the wages of employees in payment of membership dues in a labor organization: *Provided*, that the employ[illegible] has received from each employee, on whose account such deductions are made, a written assignment which shall not be irrevocable for a period of more than one year, or beyond the termination date of the applicable collective agreement, whichever occurs sooner; or (5) with respect to money or other thing of value paid to a trust fund established by such representative, for the sole and exclusive benefit of the employees of such employer, and their families and dependents (or of such employees, families, and dependents jointly with the employees of

other employers making similar payments, and their families and dependents): *Provided,* That (A) such payments are held in trust for the purpose of paying, either from principal or income or both, for the benefit of employees, their families and dependents, for medical or hospital care, pensions on retirement or death of employees, compensation for injuries or illness resulting from occupational activity or insurance to provide any of the foregoing, or unemployment benefits or life insurance, disability and sickness insurance, or accident insurance; (B) the detailed basis on which such payments are to be made is specified in a written agreement with the employer, and employees and employers are equally represented in the administration of such fund, together with such neutral persons as the representatives of the employers and the representatives of the employees may agree upon and in the event the employer and employee groups deadlock on the administration of such fund and there are no neutral persons empowered to break such deadlock, such agreement provides that the two groups shall agree on an impartial umpire to decide such dispute, or in the event of their failure to agree within a reasonable length of time, an impartial umpire to decide such dispute shall, on petition of either group, be appointed by the district court of the United States for the district where the

trust fund has its principal office, and shall also contain provisions for an annual audit of the trust fund, a statement of the results of which shall be available for inspection by interested persons at the principal office of the trust fund and at such other places as may be designated in such written agreement; and (C) such payments as are intended to be used for the purpose of providing pensions or annuities for employees are made to a separate trust which provides that the funds held therein cannot be used for any purpose other than paying such pensions or annuities.

(d) Any person who willfully violates any of the provisions of this section shall, upon conviction thereof, be guilty of a misdemeanor and be subject to a fine of not more than $10,000 or to imprisonment for not more than one year, or both * * *

Definitions

* * * * * *

SEC. 501 (3) [29 U. S. C. 142 (3)]. The terms "commerce," "labor disputes," "employer," "employee," "labor organization," "representative," "person," and "supervisor" shall have the same meaning as when used in the National Labor Relations Act as amended by this Act.

The National Labor Relations Act, 49 Stat. 449, as amended by Section 101 of the Labor Management Relations Act, provides in part:

Definitions

* * * * *

SEC. 2 (4) [29 U. S. C. 152 (4)]. The term "representatives" includes any individual or labor organization.

STATEMENT

On December 4, 1953, an indictment in three counts charging violations of Section 302 (b) of the Labor Management Relations Act was returned against respondent in the United States District Court for the Southern District of New York. Each count charged that respondent, being a representative of employees who were engaged in an industry affecting commerce, namely, President of the International Longshoremen's Association, did unlawfully, wilfully and knowingly receive money from employers of such employees (R. 3–4). After a trial without a jury, respondent was found guilty on each count and was sentenced to imprisonment for a period of six months on each count, the sentences to run concurrently, and was fined the sum of $2,500 (R. 162–163).

During the trial, it was established by stipulation that the respondent, at the times alleged in the indictment, was the duly elected president of both the International Longshoremen's Association (ILA), an international labor organization representing longshoremen and related classifications of labor on the waterfront in the Port of New York and in other ports throughout the

nation, and the Atlantic Coast Division of the ILA; that the ILA was the recognized bargaining agent of longshore employees in the Port of New York in 1950 and 1951; that respondent was a member of the Wage Scale Committee of the ILA which negotiated collective bargaining contracts with the New York Shipping Association (NYSA), an organization of employers who employed longshoremen in 1950 and 1951; that respondent, as principal executive officer for the ILA, signed the collective bargaining agreements entered into in 1950 and 1951 between the ILA and the NYSA; that J. Arthur Kennedy & Son, Inc., and Daniels & Kennedy, Inc., were, at the times alleged in the indictment, engaged in interstate commerce, were members of the NYSA, and were bound by the collective bargaining agreements entered into by the ILA and the NYSA (R. 21–25).

The Government adduced evidence to prove that in December of each year from 1946 to 1951, James C. Kennedy, president of both J. Arthur Kennedy & Son, Inc., and Daniels & Kennedy, Inc., made an annual cash payment of $1,000 to respondent in respondent's private office in New York City. A like payment of $500 was made in April 1951 (R. 54–58). The 1950 payment was made in a sealed envelope bearing the words: "Merry Christmas to Joseph P. Ryan from J. Arthur Kennedy & Son, Inc." (R. 132–135). An

envelope using a similar greeting was used to make the payment in December 1951 (R. 54–58).

The trial court, on the basis of the proof adduced, found that respondent had received the money payments alleged in the indictment, that he knew that the money came from the Kennedy corporations, and that he knew that those corporations employed longshoremen who were members of the ILA (R. 148–149).

The Second Circuit reversed respondent's conviction with directions to the trial court to dismiss the indictment on the ground that the respondent was not a "representative" within Section 302 (b) of the Labor Management Relations Act (App., *infra*, p. 19a). Judge Learned Hand, dissenting, could see "no reason for denying * * * the natural meaning of 'representative,' which would cover any official, or at any rate the president, of a union" (App., *infra*, p. 20a).

REASONS FOR GRANTING THE WRIT

In holding that the term "representative," as used in Section 302 (b) of the Labor Management Relations Act, does not embrace respondent who is both the president and chief executive officer of the International Longshoremen's Association, which has been designated by the longshoremen of the Port of New York to be their collective bargaining agent, the decision below unduly narrows the scope of the section and makes its prohibitions virtually meaningless. By limit-

ing the term "representative" as used in Section 302 (b) to mean only the individual or labor organization designated by the employees to be their collective bargaining agent, the Court of Appeals deprives the collective bargaining process of the protection of Section 302 against the betrayal of employees by faithless and venal representatives. Since labor organizations, as legal entities, can only act through their officers or agents, the effect of the opinion below is to exonerate any such officers or agents from criminal responsibility when they betray the trust of the employees comprising the union by accepting money from the employers with whom they are expected to deal at arm's length. The opinion thus holds that, while the word "representative" as used in Section 302 (b) includes a labor organization chosen as the collective bargaining agent of the employees, it does not cover the officers or agents of the organization through and by whom alone it is able to act.

We contend that the term "representative" as used in Section 302 (b) cannot be limited to collective bargaining agents designated by the employees but must be given the usual and ordinary meaning it possesses in everyday use to include any official or officer of a union who stands for and speaks in behalf of the employees who comprise the union. While the ILA, which has been designated by the longshoremen to be their collective bargaining agent, is admittedly a

"representative" embraced by Section 302 (b), we submit that the respondent who, as president and chief executive officer of the ILA, acts for the ILA is also a "representative" of the longshoremen from whom he derives his authority and for whom he speaks as president of the ILA.[1] Both the language and history of Section 302 compel this construction.

1. In this, as in all cases which turn on the meaning of a word, resort must first be had to the language of the statute in which it is used. *Adams Express Company* v. *Kentucky*, 238 U. S. 190, 199. Section 302 (b), here involved, *supra*, p. 2, makes it unlawful for "any representative of any employees" to accept money or other thing of value from their employer, and Section 501 (3) of Title V provides that the term "representative" shall have the same meaning as when used in the National Labor Relations Act, as amended. Section 2 (4) of that Act provides that the term representative "includes any individual or labor organization." On its face "any representative of any employees," which as defined includes "any individual," covers an individual labor union officer who speaks for the employees.

This conclusion is fortified by the exceptions set forth in Section 302 (c) to the prohibition of subdivision (b): (1) money paid by an employer

[1] For a district court holding contrary to that of the Court of Appeals below, see *United States* v. *Connelly*, 129 F. Supp. 786 (D. Minn.).

to a "representative who is an employee" as compensation for his services as an employee; (2) payments made in satisfaction of a judgment or award; (3) payments for goods purchased in the regular course of business; (4) "check off" payments under certain conditions "in payment of membership dues in a labor organization;"[2] (5) payments to a trust fund "established by such representative" if certain conditions are met, including the provision that the employees and employers be equally represented in the administration of such fund, "together with such neutral persons as the representatives of the employers and the representatives of the employees may agree upon."

It is clear from these exceptions that Congress did not apply the prohibitions of subsection (b) to labor organizations as entities while exempting the officers and agents through which they act. Some of the exceptions, such as the first, can relate only to payments to individuals; others, such as the fifth, clearly relate primarily to payments to organizations as representatives of the employees. Yet this same exception uses the term "representatives of the employees" in relation to administrators of the trust fund who are not necessarily the collective bargaining representatives of such employees. That is, much of subsection (c) is meaningless unless subsection

[2] Note the use in this subdivision of labor organization, rather than the term "representative."

(b) is read to apply both to labor organizations and to the individual officers and agents of such organizations. The majority opinion below itself recognizes that the first exception can relate only to individuals and attempts to give it meaning by noting that an individual can be a representative of employees. But it hardly seems likely that, in this important section, Congress was legislating specifically for the rare situation where a group of unorganized employees use an individual alone as their bargaining representative. It is much more reasonable, and much more in conformity with the normal meaning of the words used, to interpret the language as including both labor organizations and the individuals through whom the organizations act.

The fact is that, when Congress meant to cover only the collective bargaining representative, it used apt phraseology for that purpose. Thus throughout the Wagner Act, as amended, there are phrases qualifying "representative" when the collective bargaining representative is intended, *e. g.*, "representatives * * * for the purpose of negotiating,"[3] "to bargain collectively through representatives,"[4] "representative of the employees as provided in section 9 (a),"[5] "bargain

[3] Section 151, Title 29 U. S. C.

[4] Section 157, Title 29 U. S. C.

[5] Sections 158 (a) and 158 (b), Title 29 U. S. C. Section 9 (a) of the N. L. R. A. (29 U. S. C. 159 (a)) declares who shall be the exclusive collective bargaining agent of the employees.

with a labor organization as the representative of his employees,"[6] "bargaining representative for "employees."[7] Similarly, Section 303 of Title III of the Taft-Hartley Act, dealing with boycotts and other unlawful combinations, uses representative with modifying terms, *i. e.*, "labor organization as the representative," "representative of such employees under the provisions of section 9 of the National Labor Relations Act," and "bargaining representative." While it is true that the word "representative" so used imports the collective bargaining agent of the employees, such meaning stems, not from the word itself, but rather from the context in which it is used and the modifying words which surround it. If, as the Court of Appeals has held, "representative" is a word of art signifying only the designated collective bargaining agent of the employees, the modifying phrases would be unnecessary. It is only by giving the word its customary usage that meaning can be read into the phrases used in conjunction with it.

Whatever meaning is given to "representative" in Titles I and III of the Labor Management Relations Act is, by virtue of Section 501 (3) of Title V, applicable to Titles II and IV as well. There the term "representative" has none of the artful connotation with which the opinion below would endow it. In Title II, dealing with con-

[6] Section 158 (b), Title 29 U. S. C.

[7] Sections 158 (b) and 159 (a), Title 29 U. S. C.

ciliation of labor disputes, the word "representative" appears in Sections 204 (a) and 211 (a) and (b). Section 204 (a) uses the phrase "* * * employers and employees and their representatives * * *" Section 211 (a) uses the words "* * * interested representatives of employers, employees, and the general public * * *" and Section 211 (b) "* * * upon request of the Service, or employers, employees, or their representatives * * *." In this context, the word must be given its customary meaning in ordinary usage; it certainly is not used as a word of art signifying the collective bargaining agent. In Section 404 of Title IV the phrase "representatives of business, industry, finance, and labor" indicates that the term "representative," defined in Section 501 (3), must be given the customary and usual meaning it possesses in everyday usage.

To say that the word "representative" is a term of art meaning the collective bargaining agent designated by the employees unless the context indicates otherwise, is to ignore Sections 501 (3) and 2 (4) which purport to define the word and give it the same fixed meaning every time it is used in the Act. Rather the Act shows that when only the collective bargaining agent is intended, words of limitation are used with the term "representative." Only by giving "representative" the meaning it has acquired in daily use can it be understood consistently in the many and varied sections in which it is used.

2. The majority opinion below relies heavily upon the legislative history of Section 302, particularly on the fact that much of the discussion centered upon the need for regulating union welfare funds, especially that of the United Mine Workers (App., *infra*, pp. 15a–17a). That reasoning is so well answered by the dissenting opinion of Judge Hand below that little would be served by retracing that history here.[8] Judge Hand states (App., *infra*, p. 23a):

> * * * The principal discussion was indeed about contributions to a union's treasury; and that was true as well of the "Case Bill"—the predecessor of the Act before us—as of the Act itself. The absence of much discussion about preventing the kind of offence here prosecuted, seems to me not at all surprising; there could have been no opposition to it, except that in fact made: it might cover innocent payments. * * *

[8] The basic provisions of this section were introduced as an amendment from the floor by Senator Byrd to the Case Bill, H. R. 4908 on May 10, 1946. 92 Cong. Rec. 4809. The bill with the Byrd amendment passed both houses, was vetoed by the President and the veto was sustained in the House. 92 Cong. Rec. 5521–5522, 5739, 5946, 6674, 6678. With respect to the Taft-Hartley Act, Senator Ball proposed from the floor the amendment which became Section 302(b). 93 Cong. Rec. 4677, May 7, 1947. No such provision was in the House bill except in relation to unfair labor practices. See p. 21 in text. After a conference report, which, with respect to the section here involved, eliminated a definition section discussed in the text, *infra*, pp. 17–20, the bill passed both houses. 93 Cong. Rec. 6361, 6536. A presidential veto was overridden. 93 Cong. Rec. 7485, 7489, 7538.

Moreover, even with relation to the welfare funds, it is clear that Congress thought of payments to individual officers of a labor union as a payment to a "representative" of the employers. One of the expressed reasons for the necessity of controlling welfare funds was the fact that labor union officials, such as John L. Lewis, would have too much control over such funds. Thus, with respect to the predecessor Byrd amendment to the Case bill (see fn. 8), Senator Byrd stated (92 Cong. Rec. 5770):

> The amendment is designed to do one thing, and that is to prohibit an employer from paying or agreeing to pay any money or anything of value to a labor union *or to its representatives,* the expenditure of which would be controlled solely by the labor union or its representatives. It specifically provides for the establishment of health and welfare funds under joint control. [Emphasis added.]

See also 92 Cong. Rec. 4900. When Senator Ball introduced the amendment which became Section 302 (b) (see fn. 8), he said (93 Cong. Rec. 4678): 4678):

> Mr. President, the sole purpose of the amendment is not to prohibit welfare funds, but to make sure that they are legitimate trust funds, used actually for the specified benefits to the employees of the employers who contribute to them, and that they shall not degenerate into bribes.

> * * * I myself think that unless we make sure that such funds, when they are established, are really trust funds and are actually used for the benefit to employees specified in the agreement, there is very grave danger that the funds will be used for the personal *gain of union leaders,* or for political purposes, or other purposes not contemplated when they are established, and that they will in fact become rackets. [Emphasis added.]

Thus, individual representatives of labor unions, union leaders, were conceived as being within the reach of the section.

The majority below places considerable reliance upon the elimination of a definition of representative which had appeared both in the Byrd amendment to the Case bill and in the Ball amendment to the Taft-Hartley bill before the latter was reported by the Conference Committee (App., *infra,* pp. 14a–15a). The legislative history shows that such reliance is misplaced. When Senator Byrd first offered his amendment from the floor during debate on the Case bill on May 10, 1946, 92 Cong. Rec. 4809, it did not have a provision defining representative and did not have all the exceptions which presently appear in Section 302 (c).* Yet Senator Byrd stated:

> The term "representative" includes an individual who is a labor representative as

*The only exceptions in Senator Byrd's amendment were for payment of wages earned and amounts deducted for dues of a labor organization.

well as a labor organization [92 Cong. Rec. 4891].

During debate on the amendment he stated, 92 Cong. Rec. 4892–4895:

> I am endeavoring to strike at the attempt of *representatives* of labor to obtain payments from employers in excess of the salaries paid their employees, and use such payments in establishing funds over which no one but the labor representatives would have any control. * * *
>
> * * * * * *
>
> My amendment would prevent an employer from paying a royalty to *the representative of a union.* He would be clearly liable, under the provisions of this amendment, if he paid a royalty or other money *to the representative of a labor union,* the purpose of which was to bribe that representative. * * *
>
> * * * * * *
>
> Mr. President, I shall not labor this matter any longer at this time. It probably will be discussed further.
>
> I merely desire again to emphasize that all the amendment does is to prohibit *the representatives of a labor union* from receiving from an employer a specific sum of money. * * *.
>
> * * * * * *
>
> I will say that the only prohibition here is from making a payment to a representative of the employees, and that means *a representative of the union.* * * * [Emphasis added.]

It was in answer to arguments that this would prohibit proper payments, such as a contribution to an employee representative of a company baseball team, that Senator Byrd later modified his amendment so as to include the following definition (92 Cong. Rec. 5040–5041):

> (f) As used in this section * * *
>
> (3) "Representative" means any labor organization which, or any individual who, is authorized or purports to be authorized to deal with an employer, on behalf of two or more of his employees, concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work; and any other organization or fund of which a majority of the officers are representatives or are members of a labor organization or are elected or appointed by a representative.

This was a narrowing definition, intended to confine the section to those representatives of labor unions who acted as representatives of the employees concerning employment matters, and not in some other capacity. Senator Taft so stated during debate on the bill. 92 Cong. Rec. 5466.

The Ball amendment to the Taft-Hartley act carried over the definition as subsection (g), together with the more detailed exceptions which had been added during debate on the Byrd bill and presently appear in Section 302 (c), including the exception regulating trust funds. The House bill had had no such provision except as to unfair labor practices. See p. 21, *infra*. The Con-

ference Committee adopted the Senate version but dropped the definition section, stating merely (H. Rep. No. 510 (80th Cong., 1st Sess.), p. 67):

> The conference agreement adopts the provisions of the Senate amendment with minor clarifying changes.

Possibly the Conference Committee thought that the detailed exceptions in subsection (c) made unnecessary a special definition of the term "representative." In any event, the fact remains that, before there was any definition of any kind, Congress clearly thought of the language that is now in Section 302 (b) as covering union officials as well as the unions as such. As Judge Hand points out in his dissent (App., *infra,* p. 24a), "although the supplanted section did contain the word 'individual,' as well as 'labor organization,' it limited it to an 'individual' who was, or claimed to be, authorized to deal with an employer." If the elimination of the definition provision has any significance to the problem here involved, it is to make the prohibition against payments by an employer to a union officer more encompassing than it was without such definition.

3. As applied to the respondent Ryan, Section 302 prohibits a labor leader from accepting or receiving gifts or other forms of payments from employers with whom he deals on behalf of employees, except within the exceptions of subsection (c). As shown above (*supra,* pp. 16–18), Senators Byrd and Ball, the authors of Section

302, were concerned with the payment of bribes by employers to representatives of labor unions. That Section 302 prohibits all such payments with specified exceptions, without requiring proof of an offense in the nature of bribery, can only reflect Congressional awareness of the problems of proving that purported Christmas and birthday gifts are not bribes. Thus, the prohibition is simply another application of the rule that a trustee will not be permitted to deal with the trust res, so as to guarantee his undivided loyalty to those whose interests he represents. It is clear that Congress was aware of the relationship of such employer payments to union officials to unfair labor practices, and that this was coupled with concern over the administration of welfare funds.[10] For as H. R. 3020, 80th Cong., 1st Sess., the House version of the Taft-Hartley legislation, was passed by the House, Section 8 (a) (2) (B) provided that it should be an unfair labor practice for an employer to dominate or interfere with a labor organization "by giving, or offering to give, any reward, favor, or other thing of value to any person in a position of trust in such organization for the purpose of perverting his judgment or corrupting his conduct in respect to such organization."

---

[10] For a recent study of employers' payments to officers of respondent's union and the demoralizing effect of such payments upon employer-employee relationships, see the *Fourth Report of the New York State Crime Commission* (1953) pp. 12–14.

By limiting the term "representative" as used in Section 302 to labor organizations and excluding therefrom labor union officials and leaders through whom the union must act, the court below has emasculated a major part of an important statute in the field of labor relations contrary to the evident Congressional intent. In a field largely preempted by federal legislation, it would leave the federal government with no power to punish a labor leader who accepts payments from those with whom he must deal on behalf of the employees. Such an undesirable result is reached only by a strained construction of both the language and the legislative history of the section, both of which seem to us to compel a contrary conclusion. The cause is therefore one which should be reviewed by this Court.

CONCLUSION

It is therefore respectfully submitted that this petition for a writ of certiorari should be granted.

SIMON E. SOBELOFF,
Solicitor General.
WARREN OLNEY III,
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RICHARD J. BLANCHARD,
Attorneys.

JULY 1955.

United States Court of Appeals for the Second Circuit

No. 322—October Term, 1954

Argued May 11, 1955. Decided July 1, 1955

DOCKET NO. 23546

UNITED STATES OF AMERICA, APPELLEE

v.

JOSEPH P. RYAN, DEFENDANT-APPELLANT

Before L. HAND, SWAN and FRANK, Circuit Judges

Appeal from a judgment of the United States District Court for the Southern District of New York, entered by Judge Palmieri, after a trial without a jury. Reversed.

J. Edward Lumbard (Arnold Bauman, George H. Bailey, of counsel) for appellee. Waldman & Waldman (Louis Waldman, Seymour M. Waldman and Martin Markson, of counsel) for appellant.

Defendant-Appellant, Joseph P. Ryan, President of the International Longshoremen's Association (hereafter called ILA) was indicted, under 29 U. S. C. Section 186 (b) and (d)—61 Stat. 302 (b) and (d)—on three counts, in that, on three separate occasions, he unlawfully, willfully and knowingly received sums in the aggregate of $2,500, from corporations employing members of the ILA. With the consent of defendant, the

case was tried without a jury. There was evidence that, on three occasions during 1950 and 1951, when defendant was president of the ILA and its Atlantic Coast District, he was visited by James C. Kennedy, president of Daniels & Kennedy, Inc. and of J. Arthur Kennedy & Son, Inc., and was given envelopes containing money. There was also evidence that the two corporations headed by Kennedy employed longshoremen who were members of the ILA. The trial judge found that the defendant knew he was receiving money, knew that he was receiving it from one who employed workers represented by the union of which he was president, and knew he was receiving it because he was a union official. The judge, holding defendant guilty on all counts, sentenced him to imprisonment for six months on each count (the sentences to run concurrently) and fined him $2,500. Defendant has appealed.

61 Stat. 136–162, The Labor Management Relations Act (the so-called Taft-Hartley Act) was enacted in 1947. Section 101 of that Act amended the National Labor Relations Act originally enacted in 1935. Section 2 of the National Labor Relations Act, as thus amended, reads in part as follows: "When used in this Act * * * (4) The term 'representatives' includes any individual or labor organization." (61 Stat. 137).[1]

Section 501 of the 1947 Act (61 Stat. 161) reads in part as follows: "When used in this Act * * * (3) The terms 'commerce,' 'labor disputes,' 'employer,' 'employee,' 'labor organization,' *'repre-*

[1] In fact, this provision continued unchanged the definition of "representatives" contained in the N. L. R. A. before its amendment in 1947.

sentatives,' 'person,' and 'supervisor' shall have the same meaning as when used in the National Labor Relations Act as amended by this Act."[2]

Section 302 of the 1947 Act (61 Stat. 157–158) reads as follows:

> *Restrictions on payments of employee representatives*
>
> (a) It shall be unlawful for any employer to pay or deliver, or to agree to pay or deliver, any money or other thing of value to any representative of any of his employees who are employed in an industry affecting commerce.
>
> (b) It shall be unlawful for any representative of any employees who are employed in an industry affecting commerce to receive or accept, or to agree to receive or accept, from the employer of such employees any money or other thing of value.
>
> (c) The provisions of this section shall not be applicable (1) with respect to any money or other thing of value payable by an employer to any representative who is an employee or former employee of such employer, as compensation for, or by reason of, his services as an employee of such employer; (2) with respect to the payment or delivery of any money or other thing of value in satisfaction of a judgment of any court or a decision or award of an arbitrator or impartial chairman or in compromise, adjustment, settlement or release of any claim, complaint, grievance or dispute in the absence of fraud, or duress; (3) with respect to the sale or purchase of an article or commodity at the prevailing mar-

[2] Emphasis added.

ket price in the regular course of business; (4) with respect to money deducted from the wages of employees in payment of membership dues in a labor organization: *Provided,* That the employer has received from each employee, on whose account such deductions are made, a written assignment which shall not be irrevocable for a period of more than one year, or beyond the termination date of the applicable collective agreement, whichever occurs sooner; or (5) with respect to money or other thing of value paid to a trust fund established by such representative, for the sole and exclusive benefit of the employees of such employer, and their families and dependents (or of such employees, families and dependents jointly with the employees of other employers making similar payments and their families and dependents): *Provided,* That (A) such payments are held in trust for the purpose of paying, either from principal or income or both for the benefit of employees, their families and dependents, for medical or hospital care, pensions on retirement or death of employees, compensation for injuries or illness resulting from occupational activity or insurance to provide any of the foregoing, or unemployment benefits or life insurance, disability and sickness insurance, or accident insurance; (B) The detailed basis on which such payments are to be made is specified in a written agreement with the employer, and employees and employers are equally represented in the administration of such fund, together with such neutral persons as the representatives of the employers and the representatives of the employees may agree upon and in the event the employer and employee groups deadlock on the administration of such

fund and there are no neutral persons empowered to break such deadlock, such agreement provides that the two groups shall agree on an impartial umpire to decide such dispute, or in event of their failure to agree within a reasonable length of time, an impartial umpire to decide such dispute shall, on petition of either group, be appointed by the district court of the United States for the district where the trust fund has its principal office, and shall also contain provisions for an annual audit of the trust fund, a statement of the results of which shall be available for inspection by interested persons at the principal office of the trust fund and at such other places as may be designated in such written agreement; and (C) such payments as are intended to be used for the purpose of providing pensions or annuities for employees are made to a separate trust which provides that the funds held therein cannot be used for any purpose other than paying such pensions or annuities.

(d) Any person who willfully violates any of the provisions of this section shall, upon conviction thereof, be guilty of a misdemeanor and be subject to a fine of not more than $10,000 or to imprisonment for not more than one year, or both.

(e) The District Courts of the United States and the United States Courts of the Territories and possessions shall have jurisdiction, for cause shown, and subject to the provisions of Section 17 (relating to notice to opposite party) of the Act entitled "an Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes," approved October 15, 1914, as amended (U. S. C., title 28, sec. 381), to restrain violations of this section,

without regard to the provisions of section 6 and 20 of such Act of October 15, 1914, as amended (U. S. C., title 15, sec. 17, and title 29, sec. 52), and the provisions of the Act entitled "An Act to amend the Judicial Code and to define and limit the jurisdiction of courts sitting in equity, and for other purposes," approved March 23, 1932 (U. S. C., title 29, secs. 101–115).

(f) This section shall not apply to any contract in force on the date of enactment of this act, until the expiration of such contract, or until July 1, 1948, whichever occurs first.

(g) Compliance with the restrictions contained in subsection (c) (5) (B) upon contributions to trust funds, otherwise lawful, shall not be applicable to contributions to such trust funds established by collective agreement prior to January 1, 1946, nor shall subsection (c) (5) (A) be construed as prohibiting contributions to such trust funds if prior to January 1, 1947, such funds contained provisions for pooled vacation benefits.[3]

FRANK, *Circuit Judge:*

1. Defendant correctly asserts that there was no evidence of extortion (or the like). Accordingly, he argues thus: Previous to the enactment of Section 302 (b), extortion had already been covered by the so-called Anti-Racketeering Act, 18 U. S. C. 1951; section 302 (b) should not be construed to include the receipt of money or property, absent extortion, since then it would be, or come close to being, void for agueness, and a court should, if possible, avoid an interpretation

[3] The references to the National Labor Relations Act are clearer in 61 Stat. 136–162 than in 29 U. S. C.

of a statute that would make it void or put it on the edge of the unconstitutional.

Defendant also argues that Section 302 (b) should not be construed to include representatives of unions because then it would overlap state statutes. Here defendant cites *Jerome* v. *United States*, 318 U. S. 101, 104–105, where the court said: "Since there is no common law offense against the United States * * *, the administration of criminal justice under our federal system has rested with the states, except as criminal offenses have been explicitly prescribed by Congress. We should be mindful of that tradition in determining the scope of federal statutes defining offenses which duplicate or build upon state law. In that connection, it should be noted that the double-jeopardy provision of the Fifth Amendment does not stand as a bar to federal prosecution though a state conviction has already been obtained * * *. That consideration gives additional weight to the view that where Congress is creating offenses which duplicate or build upon state law, courts should be reluctant to extend the deferred offenses beyond the clear requirements of the statute."

We have not found it necessary to consider either of those contentions, since we rest our decision on another ground. 3. Defendant's principal argument is that he was not a "representative of any employees" within the meaning of Section 302 (b). His reasoning is as follows:

> Section 501 (3) provides that "when used in this Act, the term 'representative' is to have the same meaning as when used in the National Labor Relations Act as

amended by this Act." Section 2 of the National Labor Relations Act, as thus amended, provides that, when used in that amended Act, the "term 'representative' includes any individual or labor organization."

Throughout the NLRA, as thus amended, "representative" is used, with reference to a representative of employees, as a word of art, to mean solely a labor organization or an individual (or individuals) designated by a majority of the employees, in an appropriate unit, as their exclusive bargaining representative.

This interpretation of "representative" in Section 302 (b) is in complete accord with the primary purpose of Congress in enacting Section 302 as an entirety, i. e., to render unlawful the creation of union welfare funds unless restricted as provided in Section 302 (c) (5).

In the case at bar, a union, ILA, was the exclusive bargaining representative. Consequently, here Section 302 (b) could apply to the union only, not to defendant who was but a representative of the representative, i. e., of the union.

Accordingly, defendant did not violate subsection 302 (b).

The government, on the other hand, contends that "representative" in subsection 302 (b) must be given its everyday, commonplace meaning; that, therefore, it includes a representative of a union; and that defendant comes within that definition. If subsection 302 (b) stood alone, that contention would be highly persuasive.*

* If, however, we accepted that interpretation, we would have to consider defendant's argument noted in point I of this opinion.

That subsection, however, is not an island but part of a statutory continent. To understand the words "representative of any employees" in subsection (b) of Section 302, we must look to Section 501 (3) which instructs us that "representative" in Section 302 (b) has the same meaning "as when used in the amended National Labor Relations Act." In Section 2 (4) of that Act, we find the "term 'representative' includes any individual or labor organization." We thereby learn what "representative" includes. To understand what it means, with reference to a "representative of any employees," we must heed Section 501 (3) and turn to the many sections of the amended NLRA where "representative" is so used.[5] We discover that there invariably it means a "representative" selected by a majority of the employees, in an appropriate unit, as their exclusive bargaining representative. (Only once is it used otherwise, i. e., in Section 2 (1) where, defining "person," the Act includes a "legal representative.") The question then arises whether an "individual" can be an exclusive bargaining representative. Clearly he can. The Labor Board has so interpreted the Act.[6]

We see nothing in the exception clauses of Section 302 (c) at all at odds with defendant's

[5] See Sections 1, 2, 7, 8a (3), 8 (a) (5), 8 (b), 8 (b) (4), 8 (d), 9 (a), 9 (b), 9 (c) (1) and 9 (g).

[6] See *The Robinson-Ransbottom Pottery Company*, 27 N. L. R. B. 1093 (1940); *The Louisville Sanitary Wiper Company, Inc.*, 65 N. L. R. B. 88 (1945). These cases arose under the N. L. R. A. before its amendment in 1947; but that amendment did not change the statutory definition of "representative."

contention: Clauses (2), (4) and (5) obviously are not. Clauses (1) and (3) apply to an individual employee who is also an exclusive bargaining agent—and thus himself a "representative." We think it significant that when, in the 1947 Act, Congress wanted to refer to individuals acting for a union, it spoke of them not as "representatives" of a "labor organization," but as "agents" of such an organization; see Section 8 (b)—61 Stat. 141—of the amended N. L. R. A., a subsection added by the 1947 Act.

The government argues that, in every instance where "representative" is used in the amended N. L. R. A. to designate a "representative" of employees, the word is qualified by the word "bargaining" or by the phrase "subject to Section 9 (a)." That is not true: Section 8 (b) (4) (B) and Section 8 (d)—61 Stat. 141–142—use the words "representative of his employees" or "representative of the employees" without any qualification, and Section 1 (61 Stat. 137) and Section 7 (61 Stat. 140) speak of "representatives of their own choosing."

The following further suggestion is advanced: (1) As defined in Section 2 (5) of the N. L. R. A.,[7] "labor organization" can be interpreted to cover not only an exclusive bargaining agent but also either any group or any individual whatever to

[7] This subsection reads as follows: "The term 'labor organization' means any organization of any kind, or any agency or employee representation committee or plan, in which employees participate and which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work."

whom any employees give authority to deal with their employer "concerning grievances, labor disputes, wages, rates of pay, hours of employment or conditions of work." (2) Accordingly, since Section 2 (4) provides that "representatives" include "any individual or labor organization," an individual who is not an exclusive bargaining agent can be a "representative."

We reject that suggestion for these reasons: (1) It involves a straining of the language of Section 2 (5) to have the term "labor organization," which normally imports a collective body or group, cover an individual. (2) More important, if "labor organization" includes an individual, then Section 2 (4) uses the word "individual" redundantly when it says that "representatives" include "any individual or labor organization." For the suggested interpretation of Section 2 (4) would cause it to read, in effect, thus: "The term 'representatives' include (a) an individual or (b) an individual or a group having authority from any employees to deal with their employer."

3. The government makes much of the legislative history. But, so far as it illuminates, it tends strongly to support defendant's contention. This appears from the following:

A forerunner of the 1947 Act was the so-called Case Bill, H. R. 4908, reported on the floor of the House of Representatives on January 28, 1946 (92 Cong. Rec. 490). After this bill passed the House, on February 7, 1947 (Cong. Rec. 1059, 1118), the Senate Committee reported it on April 15, 1946. On May 16, 1946, Senator Byrd submitted an amendment (92 Cong. Rec. 4809) en-

titled "Restrictions on Payments to Labor Organizations." This Byrd amendment (except for the definition of "representative" noted, *infra*) is substantially the same as the present Section 302. The Case Bill, including the Byrd amendment, was passed by Congress but was vetoed by the President, and Congress failed to overrule the veto.

One year later, as part of the comprehensive labor bill then under consideration, an amendment similar to the Byrd amendment was introduced in the House but failed of passage. The Senate Labor Committee reported out the comprehensive labor bill without any such amendment. However, five members of that Committee, including Senators Taft and Ball, filed a Supplemental Report (to the Committee's report) in which they urged an amendment quite like the Byrd amendment of the previous year. On May 7, 1947, Senator Ball, for himself and three other Senators, introduced the amendment on the Senate Floor (93 Cong. Rec. 4667), and it was adopted as Section 302 of the Senate bill.

Like the Byrd amendment, Section 302, as adopted by the Senate, included the following subsection (g):

> For the purposes of this section, the term "representative" means any labor organization which, or any individual who, is authorized or purports to be authorized to deal with an employer, on behalf of two or more of his employees, concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work; and for the purposes of section 301 includes any other organization or fund of,

> which some of the officers are representatives or are members of a labor organization or are elected or appointed by a representative.

This definition was susceptible of the interpretation that "representative" included a union official. Senator Ball, explaining that paragraph, (g), said (93 Cong. Rec. 4678): "Subsection (g) is simply a definition of the term 'representative' as used in the section, which is required to be somewhat different from the definition of 'representative' in the National Labor Relations Act."

But the Joint Conference Committee, which ironed out the differences between the House and Senate bills, significantly omitted that definition and, instead, added the word "representative" to the list of terms defined by Section 501 (3) as having the same meaning as when used in the amended N. L. R. A. In this form, the bill passed both houses of Congress and was enacted over a Presidential veto.

Before the Joint Conference Committee made that change, Senator Ives, in debate, had said: "* * * I * * *, should like to point to section (b) * * * I wish to inquire whether that could be construed in any way as affecting Christmas presents or birthday presents or anything of that type. The language is rather broad, and it appears to me to be vague" (93 Cong. Rec. 4748). Senator Ives later was a Senate member of the Joint Conference Committee which made the change.

Most of the Congressional debates and Committee reports concerning Section 302, and concerning the Byrd amendment in the previous

Congress, were devoted to the subject of the regulation of union welfare funds. They show that this section was prompted by the demand of the United Mine Workers Union for an employer contribution to a welfare fund of 10¢ per ton of coal, a fund administered by the union alone with no restrictions on its discretion.* The following statements from the debates on the Ball amendment are illustrative:

Senator BALL. "Mr. President, the pending amendment deals with so-called welfare funds, which are becoming increasingly prominent in negotiations between unions and employers. * * * Mr. President, the sole purpose of the amendment is not to prohibit weltare funds, but to make sure that they are legitimate trust funds. * * * " (93 Cong. Rec. 4678).

Senator BYRD. "It [the amendment] has a specific purpose, which is to prohibit the labor unions from requiring welfare funds to be paid into the treasuries of the labor unions" (93 Cong. Rec. 4678).

Senator TAFT. "The occasion of the amendment was the demand by the United Mine Workers of America that a tax of 10¢ a ton be levied on all coal mined, and that the tax levied be paid into a general welfare fund to be administered by the union for practically any purpose the union considered to come within the term 'welfare.' * * * The purpose of the amendment is to require that the fund shall be established in definite detailed form. * * * The purpose is to prevent

*Also discussed was a limitation on checkoffs to labor organizations.

the abuse of welfare funds. * * * This amendment is, in effect, a provision to prevent the abuse of the right to establish such funds by collective bargaining * * *" (93 Cong. Rec. 4746–47).

Sen. Rep. 105 on S. 1126, Supplemental Views, p. 52 (Senators Taft, Ball, Dom...l, Jenner, H. Alexander Smith): "Limitation on Abuse of Welfare Funds. * * * The necessity for the amendment was made clear by the demand made last year on the part of the United Mine Workers. * * * "

The government points to a few isolated expressions in the Supplemental Report in 1946, and during the debates in 1946 and 1947,[9] indicating that Section 302 (b) may have been intended (1) to apply to union representatives and (2) to cover extortion.[10] Those relative to "extortion" can be read as characterizing such demands on employers as those made by the United Mine Workers for the establishment of unregulated union trust funds. Thus when Senator Taft (93 Cong. Rec. 4746) mentioned "a case of extortion or a case where the union representative is shaking down the employer," the context suggests that he had in mind the alleged practice of some unions of bargaining for their own benefit rather than for the benefit

[9] Many of them emanated from Senators or witnesses interested in defeating Section 302.

[10] The Supplemental Report (1946) said: "The amendment makes extortion illegal."

Senator Taft in 1947 (93 Cong. Rec. 4746) spoke of "a case of extortion or a case where the union representative is shaking down the employer."

of the employees they represented. These unions would exert marked pressure to gain employer contributions to an uncontrolled fund; it was said that such funds would then be used as union "slush" or strike funds. The grant of such employer contributions, it was urged, would be accepted by the union as the price of a collective bargaining agreement in lieu of other benefits which the workers should have received. This fear was expressed by Senator Ball, in introducing his amendment, as follows:

> Mr. President, the sole purpose of the amendment is not to prohibit welfare funds, but to make sure that they are legitimate trust funds, used actually for the specified benefits to the employees of the employers who contribute to them and that they shall not degenerate into bribes. * * * I have heard of many cases in which unions have even relinquished wage demands in order to secure a welfare fund with a percentage of the payroll paid into the welfare fund established, and employers have frequently agreed to that procedure. (93 Cong. Rec. 4678 (1947).)

In any event, the significant fact is that all those expressions occurred before the Joint Conference Committee had deleted paragraph (g) of Section 302 (above quoted) separately defining "representatives," and had substituted the definition now contained in Section 501.[10a]

[10a] The Joint Conference Committee reported that Section 302 of the Senate bill "was adopted with minor clarifying changes." We see no conflict between the significance we have attached to the changes made by that Committee and the report's description of those changes as

Since defendant was not a "representative" within Section 302 (b) as we interpret it, we reverse with directions to dismiss on the merits.

Reversed.

HAND, *Circuit Judge* (dissenting).

As my brothers say, § 142 (3) of Chapter 49, U. S. Code, which is part of Subchapter I of the "Labor-Management Relations Act, 1947," defines the term, "representative," by reference to its use in Subchapter II—the National Labor Relations Act. It also defines "labor organizations" in the same way. Although the word, "representative," is repeatedly used in Subchapter II, I can find no definition of it anywhere except that § 152 (4) says that it includes "any individual or labor organization"; from which it follows that the Act understands that "representatives" of employees may be other than a "labor organization." Section 152 (5) defines a "labor organization" as "any organization of any kind" (which I take to require a group of individuals) "or any agency or employee representation committee or plan in which employees participate and which exists for the purpose in whole or in part of dealing with employers, concerning grievances, labor disputes, wages, rates of pay, hours of employment or conditions of work." I should suppose that, read as it should be as in contrast to "any organization of any kind," this last language would include an individual to whom employees

"minor." For, in relation to the general purpose of the section—the regulation of union welfare funds—the changes are of little import, and only if the Section is applied to other kinds of payments do they assume importance.

give authority to deal with their employer. Therefore I cannot see any escape from saying that a single person may be a "labor organization"; and, if so, then there may be "individuals" who are "representatives" of employees and yet who are not authorized to negotiate with employers. Hence, I can see no reason for denying what to me is the natural meaning of "representative," which would cover any official, or at any rate the president, of a union. Of course § 186 might still be confined to payments made into the union treasury, but that must be for other reasons than that they are payments to a "representative." I of course agree that the section does cover payments into the union treasury (subsections (c) (4) and (c) (5) prove that), but the accused must go further, and does: for he argues that the section covers no payments but those made in the course of negotiation and to a bargaining agent of the union for the union. But I start with the premise, that, so far as concerns definitions, there is no reason why we should not understand the word in its ordinary sense; and it is certainly irrelevant that the Act uses it in most instances—for example, in § 158 (d)—in a limited sense.

However, I go further, because I find evidence in subsection (c) that it does not exclude union officials, though they are not engaged in bargaining. That subsection is the provision that excepts payments which without it would fall within subsections (a) and (b). Subsections (c) (4) and (c) (5) are indeed confined to payments made to a union, and I think that the same is true of subsection (c) (2), although that is not quite

so certain. On the other hand subsections (c) (1) and (c) (3) presuppose that § 186 covers payments into the pocket of a union official for his own use; because, since, as I have just said, the purpose of subsection (c) is to state exceptions to the preceding subsections (a) and (b), the payments that subsection (c) covers would fall within (a) and (b) except for the exception. Hence, subsections (a) and (b) do cover payments not made into the union treasury, but directly to a "representative," who need not himself have any authority whatever to negotiate for the union. The accused answers that these subsections are only to protect those, who may be negotiating for the union, when they take their wages or have an ordinary market transaction with the employer. So far as the "representatives" are only the bargaining agents of a union, that construction makes the subsections only cautionary, and does not answer the objection that, not only are they called exceptions, but they are indiscriminately mixed with indubitable exceptions. On the other hand, if they are treated as true exceptions (as they may be if confined to cases where the individual negotiators are themselves the union) although the formal difficulty is avoided, the occasions on which the subsections would apply are so much reduced that it is most unlikely that Congress would have thought it worth while to provide for them. It must very rarely be true that one or two or three individuals are in fact a "labor organization"; and it is substantially impossible, I submit, that Congress would have deemed the possible accumulation of the union funds of such "labor organizations" an

appreciable evil. For the foregoing reasons I do not think that there is the least textual reason to confine § 186 to payments made to union "representatives" into the union treasury as a result of bargaining negotiations.

As I have said, that was indeed one of the objects of the Act, and it was particularly present in the mind of Congress at the time, for in 1947 the "Mine Workers Union" was attempting to collect a large "war chest." But that does not mean that prevention of such accumulations was the only object of the Act. Moreover, in order to affirm the conviction it is not necessary to suppose that § 186 was directed against the bribery of union officials, although, if I am right, it certainly does cover bribery. (Incidentally, if bribery had been the target, the penalty would almost certainly have been more than a year's imprisonment.) An altogether adequate purpose, and one which does not involve the textual difficulties I have discussed, is that in addition to preventing employers from helping to fill a union's "war chest," Congress wished to prevent employers from tampering with the loyalty of union officials, and disloyal union officials from levying tribute upon employers. The first was the situation at bar; the employer did not bribe the accused; it did what has been done, time out of mind, when one person, knowing that he is likely to have continuous dealing with another, in which the second person will be acting as a fiduciary, wishes to insure a friendly approach to the fiduciary; and makes him presents or does him favors, or in other and less palpable forms tries to turn the edge of his allegiance. Although

§ 186 deals only with the grosser forms of this evil, it presupposes a more than ordinary fiduciary defection. A union official has a double loyalty: first, he owes it to the members of his union, who have chosen him to represent them; next, he owes it to those employees, who are not members, but in favor of whom the law has nevertheless imposed on him an equal duty. Surely, it was altogether likely that Congress should wish to put an end to such abuses by both parties—the unions and the employers.

Last is the question of the history of the section's passage through Congress. The principal discussion was indeed about contributions to a union's treasury; and that was true as well of the "Case Bill,"—the predecessor of the Act before us—as of the Act itself. The absence of much discussion about preventing the kind of offence here prosecuted, seems to me not at all surprising; there could have been no opposition to it, except that in fact made: it might cover innocent payments. Besides, the question here at issue did not wholly escape notice. Take, for example, what Senator Taft said about § 186 (a): "That is, it may be said, in a case where the union representative is shaking down the employer." Or consider Senator Ives's inquiry whether § 186 (b) "could be construed in any way as affecting Christmas presents, birthday presents or anything of that type." Both he and Senator Pepper voted against the bill, presumably because they thought that for this reason it went too far. I do not forget that the section defining "representative," was at that time more specific than § 142 (3), which eventually supplanted it in con-

ference; but the amendment makes rather against the accused than in his favor, if we treat subsections (4) and (5) of § 152 as incorporated in § 142 (3). For, although the supplanted section did contain the word "individual," as well as "labor organization," it limited it to an "individual" who was, or claimed to be, authorized to deal with an employer; and § 152 (4) does not do so, as I have said.

However, even if the debates threw more light than they do on the meaning of the words, I should hesitate to accept them as an authoritative gloss. It is one thing to look for that purpose to the reports of one or both of the Houses of Congress; for it is not unreasonable to believe that those members, who are not content to let the words speak for themselves, may have relied upon the report as authoritative; and in any event that is well settled law.[11] On the other hand, although it is true that courts have repeatedly mentioned the debates that attended the passage of a bill as relevant to its interpretation, the decisions are so much at variance that I find it impossible to extract any safe principle. The words of the sponsor of a bill are presumptively entitled to be considered,[12] although it is impossible to know how far those who voted for it may

[11] *Binns* v. *United States*, 194 U. S. 486, 495; *Lapina* v. *Williams*, 232 U. S. 78, 90; *United States* v. *St. Paul M. & M. Ry.*, 247 U. S. 310, 318; *Duplex Printing Press Co.* v. *Deering*, 254 U. S. 443, 474, 475; *Wright* v. *Vinton Branch*, 300 U. S. 440, 463, 464.

[12] *Schwegmann Bros.* v. *Calvert Distillers Corp.*, 341 U. S. 384, 394, 395; *United States* v. *St. Paul M. & M. Ry.*, *supra* (247 U. S. 310, 318); *Duplex Printing Press Co.* v. *Deering*,

have acted on the faith of them; but the remarks made in general debate are not to count.[13]

There does indeed remain the question raised by Senator Ives and Senator Pepper: i. e., whether § 186 forbids a Christmas present to a union official who chances to be a friend, or even a relative, of the employer. To draw lines is always difficult; and the one sure way to miss the meaning of a statute is to read the words out of their context and as you find them in the dictionary. Nearly every statute has its penumbra, and this one is not an exception; but it would be most unreasonable to defeat a part of its purpose, because there is no a priori rule for deciding when a payment was purely donative, and when it was actuated by the prospect of possible benefits to come.

As my view is not to prevail, I shall not discuss the other objections that the accused raises, except to say that I have considered them, and that they have not convinced me that any error was committed that would justify a reversal. I would affirm the conviction.

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supra (254 U. S. 443, 474, 475); *McCaught* v. *Hersey*, 283 U. S. 488, 493, 494; *United States* v. *Great Northern Ry.*, 287 U. S. 144, 154, 155; *Wright* v. *Vinton Branch*, *supra* (300 U. S. 440, 463, 464); *Schwegmann Brothers* v. *Calvert Distillers Corp.*, *supra* (341 U. S. 384, 394, 395).

[13] *United States* v. *Trans-Missouri Freight Association*, 166 U. S. 290, 318, 319; *Dunlap* v. *United States*, 173 U. S. 65, 75; *Lapina* v. *Williams*, *supra* (232 U. S. 78, 90).

United States Court of Appeals for the Second Circuit

At a Stated Term of the United States Court of Appeals, in and for the Second Circuit, held at the United States Courthouse in the City of New York, on the 1st day of July one thousand nine hundred and fifty-five.

Present: Hon. Learned Hand, Hon. Thomas W. Swan, Hon. Jerome N. Frank, Circuit Judges.

UNITED STATES OF AMERICA, PLAINTIFF-APPELLEE

v.

JOSEPH P. RYAN, DEFENDANT-APPELLANT

Appeal from the United States District Court for the Southern District of New York.

This cause came on to be heard on the transcript of record from the United States District Court for the Southern District of New York, and was argued by counsel.

On consideration whereof, it is now hereby ordered, adjudged, and decreed that the judgment of said District Court be and it hereby is reversed and action remanded with directions to dismiss on the merits in accordance with the opinion of this Court.

(S) A. DANIEL FUSARO,
Clerk.

Filed July 1, 1955.

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In the Supreme Court of the United States

OCTOBER TERM, 1955

UNITED STATES OF AMERICA, PETITIONER

v.

JOSEPH P. RYAN

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

BRIEF FOR THE UNITED STATES

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In the Supreme Court of the United States

OCTOBER TERM, 1955

No. 281

UNITED STATES OF AMERICA, PETITIONER

v.

JOSEPH P. RYAN

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

BRIEF FOR THE UNITED STATES

OPINIONS BELOW

The opinions of the Court of Appeals (R. 30–43) are reported at 225 F. 2d 417. The opinion of the District Court (R. 19–28) is reported at 128 F. Supp. 128.

JURISDICTION

The judgment of the Court of Appeals was entered on July 1, 1955 (R. 44). The petition for a writ of certiorari was filed July 29, 1955, and was granted October 17, 1955 (R. 44). The jurisdiction of this Court rests upon 28 U. S. C. 1254 (1).

QUESTION PRESENTED

Whether respondent, the president of the International Longshoremen's Association, which has been designated by the longshore laborers of the Port of New York as their bargaining agent, is a "representative" of employees within the meaning of Section 302 (b) of the Labor Management Relations Act of 1947, which makes it unlawful for "any representative of any employees" to receive money from the employer of such employees.

STATUTES INVOLVED

The Labor Management Relations Act of 1947 (the so-called Taft-Hartley Act), 61 Stat. 136, provides in part:

> RESTRICTIONS ON PAYMENTS TO EMPLOYEE REPRESENTATIVES
>
> SEC. 302 [29 U. S. C. 186]. (a) It shall be unlawful for any employer to pay or deliver, or to agree to pay or deliver, any money or other thing of value to any representative of any of his employees who are employed in an industry affecting commerce.
>
> (b) It shall be unlawful for any representative of any employees who are employed in an industry affecting commerce to receive or accept, or to agree to receive or accept, from the employer of such employees any money or other thing of value.

(c) The provisions of this section shall not be applicable (1) with respect to any money or other thing of value payable by an employer to any representative who is an employee or former employee of such employer, as compensation for, or by reason of, his services as an employee of such employer; (2) with respect to the payment or delivery of any money or other thing of value in satisfaction of a judgment of any court or a decision or award of an arbitrator or impartial chairman or in compromise, adjustment, settlement or release of any claim, complaint, grievance, or dispute in the absence of fraud or duress; (3) with respect to the sale or purchase of an article or commodity at the prevailing market price in the regular course of business; (4) with respect to money deducted from the wages of employees in payment of membership dues in a labor organization: *Provided,* That the employer has received from each employee, on whose account such deductions are made, a written assignment which shall not be irrevocable for a period of more than one year, or beyond the termination date of the applicable collective agreement, whichever occurs sooner; or (5) with respect to money or other thing of value paid to a trust fund established by such representative, for the sole and exclusive benefit of the employees of such employer, and their families and dependents (or of such em-

ployees, families, and dependents jointly with the employees of other employers making similar payments, and their families and dependents): *Provided,* That (A) such payments are held in trust for the purpose of paying, either from principal or income or both, for the benefit of employees, their families and dependents, for medical or hospital care, pensions on retirement or death of employees, compensation for injuries or illness resulting from occupational activity or insurance to provide any of the foregoing, or unemployment benefits or life insurance, disability and sickness insurance, or accident insurance; (B) the detailed basis on which such payments are to be made is specified in a written agreement with the employer, and employees and employers are equally represented in the administration of such fund, together with such neutral persons as the representatives of the employers and the representatives of the employees may agree upon and in the event the employer and employee groups deadlock on the administration of such fund and there are no neutral persons empowered to break such deadlock, such agreement provides that the two groups shall agree on an impartial umpire to decide such dispute, or in the event of their failure to agree within a reasonable length of time, an impartial umpire to decide such dispute shall, on petition of either group, be appointed by

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the district court of the United States for the district where the trust fund has its principal office, and shall also contain provisions for an annual audit of the trust fund, a statement of the results of which shall be available for inspection by interested persons at the principal office of the trust fund and at such other places as may be designated in such written agreement; and (C) such payments as are intended to be used for the purpose of providing pensions or annuities for employees are made to a separate trust which provides that the funds held therein cannot be used for any purpose other than paying such pensions or annuities.

(d) Any person who willfully violates any of the provisions of this section shall, upon conviction thereof, be guilty of a misdemeanor and be subject to a fine of not more than $10,000 or to imprisonment for not more than one year, or both * * *

* * * * *

DEFINITIONS

* * * * * *

SEC. 501 (3) [29 U. S. C. 142 (3)]. The terms "commerce," "labor disputes," "employer," "employee," "labor organization," "representative," "person," and "supervisor" shall have the same meaning as when used in the National Labor Relations Act as amended by this Act.

The National Labor Relations Act, 49 Stat. 449, as amended by Section 101 of the Labor Management Relations Act, provides in part:

DEFINITIONS

* * * * * *

SEC. 2 (4) [29 U. S. C. 152 (4)]. The term "representatives" includes any individual or labor organization.

STATEMENT

On December 4, 1953, an indictment in three counts charging violations of Section 302 (b) of the Labor Management Relations Act was returned against respondent in the United States District Court for the Southern District of New York. Each count charged that respondent, being a representative of employees who were engaged in an industry affecting commerce, namely, President of the International Longshoremen's Association, did unlawfully, wilfully and knowingly receive money from employers of such employees (R. 2–3). After a trial without a jury, respondent was found guilty on each count and was sentenced to imprisonment for a period of six months on each count, the sentences to run concurrently, and was fined the sum of $2,500 (R. 29).

During the trial it was established by stipulation that the respondent, at the times alleged in the indictment, was the duly elected president of

the International Longshoremen's Association (ILA), an international labor organization representing longshoremen and related classes of labor on the waterfront in the Port of New York and in other ports in the United States, Canada and certain territorial possessions of the United States (R. 3–4); that he was also the president of the Atlantic Coast District of the ILA (R. 3); that the ILA, the Atlantic Coast District of the ILA, and local unions affiliated with the ILA, were the recognized bargaining agents for the longshore employees in the Port of New York for 1950 and 1951 (R. 3–5); that respondent, as president and principal executive officer of the ILA, was a member of the Wage Scale Committee of the ILA, a committee comprised of over 100 persons who were either officers of the Atlantic Coast District of the ILA or selected by the various local unions affiliated with the ILA in the Atlantic Coast District, which negotiated collective bargaining agreements with the New York Shipping Association (NYSA), an organization of employers who employed longshoremen, in 1950 and 1951 (R. 5); that respondent, as principal executive officer of the ILA, and others were authorized to sign and did sign the collective bargaining agreement entered into in 1950 and 1951 between the ILA and the NYSA (R. 5); that J. Arthur Kennedy & Son, Inc., and Daniels & Kennedy, Inc., were, at the time alleged in the

indictment, engaged in interstate commerce, were members of the NYSA, and were bound by the collective bargaining agreements entered into by the ILA and the NYSA (R. 4, 5–6).

On the basis of the evidence adduced during the trial, the District Court found (R. 20) that in December of each year from 1946 to 1951, James C. Kennedy, president of both J. Arthur Kennedy & Son, Inc., and Daniels & Kennedy, Inc., made an annual cash payment of $1,000 to respondent in respondent's office in New York City. The payment in December 1950 was made in an envelope on which was written "Merry Christmas to Joseph P. Ryan from J. Arthur Kennedy & Son, Inc." The envelope containing the December 1951 payment bore the message "Merry Christmas to Joseph P. Ryan from Daniels & Kennedy, Inc." A payment of $500 was made in April 1951, in a plain envelope.

The trial court also found that respondent had knowingly received and accepted the money payments alleged in the indictment, that he knew the money came from the Kennedy corporations, and that he knew that the corporations were employers of employees that he represented (R. 25).

The Court of Appeals reversed respondent's conviction with directions to the trial court to dismiss the indictment on the ground that the term "representative" as used in Section 302 (b) of the Labor Management Relations Act refers

only to the collective bargaining agent, and that respondent, as an officer of the collective bargaining agent, was not a representative of employees within the purview of that section (R. 33–39). Judge Learned Hand, dissenting, could see "no reason for denying * * * the natural meaning of 'representative,' which would cover any official, or at any rate the president, of a union" (R. 40).

SUMMARY OF ARGUMENT

The declared purpose of the Labor Management Relations Act is to protect interstate commerce by recognizing and securing the legitimate rights of employers, employees, and labor organizations in their relations with each other. This goal will best be reached by reading the term "representative" in Section 302, as its context and the legislative history require, to cover an individual officer of a labor union as well as the union itself. In that way, the statute will protect employees from the corrupting influence of personal gifts and payments by employers to union representatives. If, however, Section 302 were held to apply only to payments to the union itself, the reach of the provision would be so restricted that one would wonder why Congress thought to include it in the form in which it appears.

I

Section 302 (a) and (b) forbids an employer from giving, and "*any* representative" of his em-

ployees from receiving, "*any*" payment. The definition sections of the Act declare that the term "representative" "includes *any* individual or labor organization" (emphasis added). In every-day as well as labor parlance, an individual who speaks for employees in their dealings with their employer is a "representative". On initial reading, therefore, the statute would seem squarely to cover a union president like respondent.

The structure and terms of Section 302 fully support this interpretation. Only when union officials are included within "representative" can the exceptions to the prohibitions of the section be given their full significance. Exempt from the prohibitions are (Section 302 (c)): (1) money paid by an employer to "any representative who is an employee" as compensation for his service as an employee; (2) payments made in satisfaction of a judgment or an award; (3) payments for goods purchased in the regular course of business; (4) check-off payments under certain conditions of union membership dues; and (5) payments to a trust fund established in compliance with statutory conditions when employers and employees are "equally represented in the administration of such fund."

If "representative" is read as synonymous with "collective bargaining agency"—as the court below would have it—some meaning can be found in

the exceptions concerning the satisfaction of judgments and awards and the check-off of union dues, but this technical definition cannot be read into the other exceptions without seriously impairing their function. If "representative" means only the collective bargaining agent, then the exception of wages, which are paid only to individual employees, applies only in the rare situation where the collective bargaining for a group of employees is done by an individual and not to the usual case where the union and its officers are the bargaining agents. This exception can have full significance only if representative is given its ordinary meaning and understood to include union officials. The same is true, though in lesser degree, of the exception for purchase of goods and even for the judgments and awards exception. These three exceptions prove that Congress contemplated that a significant number of *individuals* would be affected by the prohibition.

The welfare fund exception in Section 302 (c) (5) also establishes that a special or technical definition of "representative" is inapposite. As the court below recognized, this provision was to prevent exclusive domination of employee trust funds by unions or union officials. The clause is drafted as an exception to the general prohibitions of Section 302 (a) and (b), and is therefore totally inoperative if the employer contributions

are not made to a "representative." But if "representative" as used in Section 302 (a) and (b) is limited to collective bargaining agencies, then it would be easily possible to frustrate the important welfare fund provision by having the payments made to trustees or individuals who are not collective bargaining agents. Only by taking "representative" in its ordinary sense can both the prohibitions of subsections (a) and (b) and the welfare fund exception be read together to give the meaning to the statute which Congress obviously intended.

The ordinary meaning of "representative" not only gives that term significance in each provision of Section 302 but is completely compatible with its use in every other section of the Labor Management Relations Act. When Congress intended, as it frequently did, to refer to the collective bargaining agent of the employees, it always coupled the word "representative" with appropriate modifying words, phrases, or clauses. When it intended to refer to representatives in the ordinary sense—as in Section 302—it omitted these qualifications. Standing alone, apart from special modifiers indicating that the collective bargaining agent is meant, "representative" carries its ordinary meaning throughout the Act.

II

The historical evolution of Section 302 fortifies this interpretation of "representative". Section

302, as it now appears, had its origin in a floor amendment by Senator Byrd to the Case bill (H. R. 4908), which was introduced in the 79th Congress as a comprehensive measure to encourage the settlement of labor-management disputes and minimize industrial strife. The Byrd proposal would have made it unlawful for any employee representative to accept or receive gifts or payments from an employer. During the debate, Senator Byrd made it clear that his amendment applied to union leaders as well as to the union itself. Even when a modifying definition of "representative" was introduced as a limiting factor, it clearly encompassed union officers and was so understood. Though the Case bill passed both Houses of Congress with the modified Byrd amendment, it was vetoed by the President and did not become law.

H. R. 3020, Congressman Hartley's bill in the 80th Congress, as reported from the House Committee on Education and Labor and passed by the House, sought to attain the same end as the earlier Byrd amendment by providing that it would be an unfair labor practice for an employer to give anything of value to any person in a position of trust in a labor organization. The Senate Committee on Labor and Public Welfare then reported out a substitute bill which did not outlaw employer contributions or payments, as had H. R. 3020. A minority of the Senate Committee dis-

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agreed, and in their "Supplemental Views" filed with the Committee Report stated that they would introduce an amendment from the floor to prohibit financial transactions between employers and representatives of employees.

Pursuant to this plan, Senator Ball, one of the Committee minority, proposed from the floor an amendment patterned after the 79th Congress' Byrd amendment. Like that amendment, Senator Ball's proposal, after prohibiting representatives of employees from receiving money from employers, contained certain exceptions including one for employer payments to union welfare funds established under certain conditions. There was also a special definition of "representatives", narrower than the general definition finally employed, but which nevertheless clearly embraced union officers. The Ball amendment was adopted by the Senate and ultimately became Section 302.

The Conference Committee deleted the special definition of "representatives" from the Ball amendment (Section 302), stating that the change was a minor clarification. The bill as they reported it already had a general definition of "representatives", based upon the ordinary meaning of that word (*supra,* p. 5). Accordingly, the omission of the special definition, if it means anything at all, enlarged rather than narrowed the coverage of the Section.

The sum of this history is that whenever employer payments were dealt with during the consideration of comprehensive labor legislation in the 79th and 80th Congresses the reach of the prohibition was intended to cover payments to individual labor leaders as well as to the union itself. Section 302, which eventuated from these debates, should therefore be construed so as to carry out that purpose.

ARGUMENT

Section 1 of the Labor Management Relations (Taft-Hartley) Act declares that it is the purpose and policy of Congress, in order to promote the full flow of commerce,

> * * * to prescribe the legitimate rights of both employees and employers in their relations affecting commerce, to provide orderly and peaceful procedures for *preventing the interference by either with the legitimate rights of the other, to protect the rights of individual employees in their relations with labor organizations* whose activities affect commerce, to define and proscribe practices on the part of labor and management which affect commerce and are inimical to the general welfare, * * *. [Emphasis added.]

On its face, Section 302 (*supra*, pp. 2–5), which broadly prohibits any employer from making "any" payments to "any representative of any

of his employees" and prohibits "any representative of any employees" from accepting such payments, seems designed to effectuate those expressed purposes by protecting the purity of the collective bargaining process from the gross or subtle influences that can arise when the employer bestows favors on a representative of his employees. The opinion below, by holding that the term "representative" as used in Section 302 refers only to the collective bargaining agency—the union itself—and not to the officer or agent through which a union must act, deprives the collective bargaining process of protection against such influences. Since labor organizations can act only through their officers or agents, and the vast bulk of labor-management relationships in this country involves labor unions, the effect of the decision below is to confine Section 302 to a very limited scope, and for practical purposes to negate the Congressional purpose to eradicate improper employer influences from the collective bargaining process. In a field largely preempted by federal legislation, the ruling leaves the federal government with no power to punish a labor leader who accepts payments from those with whom he presumably is dealing at arms' length on behalf of the employees, or to punish an employer who attempts to influence union affairs by the payment of gratuities to union officials. Such a result is compelled neither by the language

nor the legislative history of Section 302. On the contrary, both the language and the legislative history support the view that "representative" has its ordinary meaning of one who speaks or acts for some one else, and as used in Section 302 includes the officers of the employees' labor union.[1]

I

THE CONTEXT OF THE TERM "REPRESENTATIVE" IN THE LABOR MANAGEMENT RELATIONS ACT SHOWS THAT AS USED IN SECTION 302 IT INCLUDES AN OFFICER OF A LABOR UNION

In this, as in all cases which turn primarily on the meaning of a single word, resort must first be had to the precise terms of the statute. Cf. *Adams Express Co.* v. *Kentucky*, 238 U. S. 190, 199; *Federal Trade Comm.* v. *Bunte Bros.*, 312 U. S. 349, 350. The pivotal word in this case is "representative" as it is used in Section 302 (b) of Title III of the Labor Management Relations Act (the LMRA), *supra*, p. 2, which makes it unlawful for "any representative of any employees" to accept money or other thing of value from their employer. Section 501 (3) of Title V of the same Act, *supra*, p. 5, provides

[1] The dissenting opinion of Judge Learned Hand in the court below (R. 39–43), expressing the view that "representative" should be read in its ordinary meaning, was followed in *United States* v. *Brennan, et al.*, 134 F. Supp. 42 (D. Minn.). Cf. *United States* v. *Connelly*, 129 F. Supp. 786 (D. Minn.).

that the term "representative" shall have the same meaning as when used in the National Labor Relations Act (the NLRA), as amended by Title I of the LMRA. Section 2 (4) of the NLRA provides, in turn, that representative "includes *any* individual or labor organization" [emphasis added]. *Supra,* p. 6. Taking this statutory definition together with Webster's,[2] the phrase "*any* representative of *any* employees" would seem clearly to cover an individual who speaks for the employees as a labor union officer. This is the normal, ordinary, natural, spontaneous meaning—in the field of labor-management relationships as well as elsewhere[3]—and it should be followed unless the rest of the statute, its purpose, or its history directs otherwise. *Addison* v. *Holly Hill Co.,* 322 U. S. 607, 617–618; *Jones* v. *Liberty Glass Co.,* 332 U. S. 524, 531; *National Labor Relations Board* v. *Highland Park Co.,* 341 U. S. 322, 324–5.

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[2] Webster's New International Dictionary (2d ed.) defines the noun "representative" as "one who represents others or another in a special capacity; an agent, deputy, or substitute * * *."

[3] In labor-management parlance, the term "union representative" or "employee representative" is commonly used to designate the *individual* who acts on behalf of the employees in their dealings with the employer. See, *e. g.*, Twentieth Century Fund, *How Collective Bargaining Works* (1945), pp. 26, 27; *Hearings before the Committee on Labor and Public Welfare on S. 55 and S. J. 22,* etc., United States Senate, 80th Cong., 1st Sess., pp. 1091–1092 (remarks of President Murray of the C. I. O.).

The rest of Section 302 does not point away from this construction. In particular, the conclusion that the prohibitions of Section 302 (a) and (b) apply to individual union officers as well as to the unions themselves—*i. e.*, that the president of the union is a "representative" of the employees, in addition to the union—is fortified by the format of the section and the exceptions set forth in subsection (c) (*supra*, pp. 3–5). Exempt from the basic prohibitions are: (1) Money paid by an employer to "any representative who is an employee" as compensation for his services as an employee; (2) payments made in satisfaction of a judgment or an award; (3) payments for goods purchased in the regular course of business; (4) "check off" payments under certain conditions in payment of membership dues in a labor organization[*] and (5) payments to a trust fund "established by such representative" if certain conditions are met, including the provision that the employees and employers be "equally represented in the administration of such fund, together with such neutral persons as the representatives of the employers and the representatives of the employees may agree upon."

It is clear from these exceptions that Congress, in enacting Section 302, did not confine the general prohibitions in subdivisions (*a*) and

[*] Note the use in this subdivision of the term "labor organization" rather than the term "representative."

(b) against "*any*" payment to "*any* representative" to payments made to labor unions as legal entities. Indisputably, the exceptions relate to payments both to individuals and organizations, thus indicating that the prohibitions, from which the exceptions are carved, must also cover both individuals and entities. Some of the exceptions, such as the payment of wages, can relate only to payments to individuals; others, *e. g.*, the payment of dues, concern only payments to the union. The exceptions of payments made in settlement of a judgment or award (Section 302 (c) (2)) and of payments of the purchase price for goods obtained in the regular course of business (Section 302 (c) (3)) can, of course, formally apply to both the union and the union officers. Payments by the employer to union welfare funds are frequently not payments to either the union or the union officers but are payments to trustees, some of whom may be union officers designated by the union to be representatives of the employees.

Since these exceptions plainly encompass payments to individuals, such as union officers, the term "representative" in the prohibitory clauses of Section 302 must also be read to include individuals as well as unions. A more limited or artful meaning of "representative" would deny substance to one or more of the exceptions, and needlessly defy the general rule of construction

requiring a statute to be read, if possible, so that all its parts shall have meaning and function.

The majority opinion of the court below recognized the difficulty involved in applying its technical definition of "representative"—the collective bargaining agency of the employees—to each of these five exceptions. It acknowledged that the wage payment exception can apply only to individuals, but in an effort to give meaning to the clause it noted that an individual, under the National Labor Relations Act, can be a collective bargaining agent and therefore a "representative". This explanation of the wage payment exception seems very strained. It is hardly likely that Congress, when faced with the many broad and fundamental issues which this innovation in the law presented, was concerned to spell out an explicit exception for the rare situation where a group of employees selected an individual instead of a union to act as their bargaining agent. The same is true of the sale and judgment exceptions if the individuals they were to cover were only those within the minute class of individual collective bargaining agencies. Conversely, the judgment and sale exceptions would have an equally insignificant role if they covered only the unions themselves, and not individual union officers. On the whole, therefore, it is reasonable to conclude from the exceptions that Congress contemplated that many individuals would be covered by the

general prohibitions of Sections 302 (a) and (b), and that there was need for specific, detailed exceptions relating to payments to such individuals. It follows that Congress must have used the term "representative" with its every-day meaning, as covering both labor unions and the individual officers who act for the union.

The court below recognized, and the legislative history discussed below makes clear (*infra*, pp. 30–45), that one important purpose of Section 302, including the exceptions carved out by Section 302 (c) (5), was to regulate welfare funds so that they would not be under the exclusive domination of a union or its leader. Yet, as we have already suggested, the interpretation given the term "representative" by the majority below might well tend to defeat this known object of the legislation. The regulation of welfare funds is in the form of an *exception* to the general prohibitions of subdivisions (a) and (b), forbidding employers from making payments to "any representative" of employees and prohibiting "any representative of any employees" from accepting such payments. If a payment by the employer does not fall within the terms of (a) or (b), standing by themselves, the exceptions created by subdivision (c) never come into play. And if "representative", as used in (a) or (b), means only the collective bargaining agency, then an easy means of evasion would exist by making payments to persons who are separate

from the collective bargaining agency. Thus, welfare fund payments can be, and sometimes are, made to a fund established by a parent union, rather than by the particular local which is the collective bargaining agent for the employees of a particular employer. Even more commonly, welfare fund payments are made directly to trustees of a fund. Since the trustees of a welfare fund are not the employees' collective bargaining representative, a payment to them would not be, under the decision below, a payment to a "representative" under Section 302 (a) and (b), and therefore it would become unnecessary to comply with the conditions created by the exception under (c). A conceded, primary purpose of the legislation would be completely frustrated, and with great ease.

On the other hand, the exception with respect to welfare funds takes on full meaning if "representative", as used in subsections (a) and (b), is given its ordinary reading of anyone who acts for a group of employees. Then, a payment to anyone acting for the employees, whether he is the collective bargaining representative or not, is within subsections (a) and (b) and, in order to take advantage of the welfare fund exception, the conditions of subsection (c) must be met. This example is but another proof that, throughout Section 302, "representative" is used broadly to encompass any person, individual or entity,

who or which acts on behalf of the employees.[5]

Furthermore, an analysis of the text of the Labor Management Relations Act, as a whole, demonstrates that Congress intended the term "representative" to have its ordinary meaning when it was used alone. For when Congress meant it to refer to the employees' collective bargaining agent—*i. e.*, the union—it used apt phraseology for that purpose. Throughout the National Labor Relations Act, as amended (Title I of the LMRA), there are phrases qualifying "representative" when the collective bargaining agent is intended, *e. g.*, "designation of representatives of their own choosing, for the purpose of negotiating the terms and conditions of their employment",[6] "to bargain collectively through representatives of their own choosing,"[7] "representatives of the employees as provided in Section

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[5] The conditions set forth in subsection (c) for welfare funds also show that "representative" is not used in the limited, technical sense of a collective bargaining agency. Subsection 5 (B) (*supra*, pp. 4–5) speaks of both employers and employees being "equally represented" in the administration of the fund, "together with such neutral persons as the representatives of the employers and the representatives of the employees may agree upon". In this instance, there can be no dispute that "representatives" does *not* mean the union, but rather the individuals who speak for the employer or the employees on the board administering the welfare fund.

[6] Section 1 of NLRA, 29 U. S. C. 151.

[7] Section 7, 29 U. S. C. 157.

9(a),"[8] "bargain with a labor organization as the representative of his employees,"[9] or "bargaining representative for employees."[10] The simple fact is that, in the NLRA, Congress did not use the unqualified word "representative" as a synonym for collective bargaining agent.

Similarly, Section 303 of Title III of the Labor Management Relations Act, dealing with boycotts and other unlawful combinations, uses "representative" with modifying terms, *i. e.*, "labor organization as the representative," "representative of such employees under the provisions of section 9 of the National Labor Relations Act," and "bargaining representative."

While it is true that the word "representative" as used in all these instances imports the collective bargaining agent of the employees, that meaning stems, not from the word itself, but from the context in which it is used and the modifying words which surround it. If, as the Court of Appeals has held here, "representative", in and of itself, is a word of art signifying only the designated collective bargaining agent of the employees,

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[8] Sections 8(a)(3) and 8(b)(3), 29 U. S. C. 158(a)(3) and (b) (3). Section 9 (a) of the NLRA, 29 U. S. C. 159(a), declares who shall be the exclusive collective bargaining agent of the employees.

[9] Section 8 (b) (4) (B) and (C), 29 U. S. C. 158 (b) (4) (B) and (c).

[10] Section 8(b)(4)(D) and see Section 9(a), 29 U. S. C. 158(a)(4)(D) and 159(a).

the modifying phrases would be unnecessary. But the fact is that Congress did not define or treat the word in itself as having a special significance for labor-management relations. Rather, the opposite is true. It is only by giving the word "representative" its customary usage that meaning can be read into the additional phrases used in conjunction with it when Congress did desire to refer to the collective bargaining agency (as it frequently did in Titles I and III of the LMRA).

Titles II [11] and IV [12] of the LMRA prove the point still further, if only by contrast. There, the term "representative" clearly has none of the technical connotation with which the opinion below would endow it. In Title II, dealing with conciliation of labor disputes, the word appears in Sections 204 (a) and 211 (a) and (b). Section 204 (a) uses the phrase "* * * employers and employees and their representatives * * *" in exhorting both labor and management to prevent and settle disputes. In connection with the furnishing by the Government of information useful in settling labor disputes, Section 211 (a) refers to "* * * interested representatives of employers, employees, and the general public * * *" and Section 211 (b) "* * * upon request

[11] Entitled "Conciliation of Labor Disputes in Industries Affecting Commerce; National Emergencies".

[12] "Creation of Joint Committee to Study and Report on Basic Problems Affecting Friendly Labor Relations and Productivity".

of the Service, or employers, employees, or their representatives * * *." In these contexts, the word "representative" is naturally given its customary meaning; it certainly is not restricted to the collective bargaining agent. The same is true of the use in Section 404 of Title IV of the phrase "representatives of business, industry, finance, and labor", in connection with the Joint Committee on Labor-Management Relations.

To say that "representative" is a term of art meaning only the collective bargaining agent designated by the employees, unless the context inexorably directs otherwise, is thus to ignore Congress' use of the word in a broader sense throughout the LMRA. It is also to disregard Section 501 (3) of the LMRA (*supra,* p. 5) and Section 2 (4) of the NLRA (*supra,* p. 6), which purport to define the word and give it its ordinary meaning when it is used in the Act. *Supra,* pp. 17–18. As we have shown, when the collective bargaining agent is alone intended, words of limitation are used together with the term "representative." Without those qualifications, the normal reading must be used. Only by giving "representative" the meaning it has in daily life can it be understood consistently in the many and varied sections in which it is used in the LMRA.

We have made this detailed textual analysis of the meaning of "representative" in Section 302, and throughout the Labor Management Rel ions

Act, because we believe that the use and context of the term in that statute plainly reveal the error in the holding below. This is so even if one assumes that the specific goals Congress was attempting to achieve through Section 302 cannot be gleaned from the bare text alone, and that a reader must proceed without the key of legislative purpose.

But it should be noted, even before we consider the detailed legislative history of the provision, that respondent's construction of Section 302 necessarily presupposes that Congress had a restricted goal—control only of financial transactions between unions and employers—and was not attempting more generally to keep the channels of collective bargaining free from improper pecuniary influences.[18]

In our view, the structure and terms of Section 302 are, on their face, more in accord with the broader aim of preventing "employers from tampering with the loyalty of union officials and

[18] If Congress were interested solely in union welfare funds, it would hardly have framed its statute by first enacting a broad and general prohibition against giving and receiving of "any" payments, and then proceeded to cover its alleged point of interest—the welfare fund—as one of five exceptions to these broad prohibitions. The structure of the section belies the contention that the only legislative goal was to reach and regulate these funds. If that were the purpose, a more direct and less involved provision would have been adopted.

disloyal union officials from levying tribute upon employers" (L. Hand J., R. 41). There would be little reason for Congress, in the effort to preserve the integrity of the labor-management relationship, to concern itself solely with payments to unions themselves. It is individuals not organizations who normally try to gain by bribery, favoritism, or extortion, and these transgressions are ordinarily committed for personal profit.[14] "Can it be logically said that Congess had the very limited purpose of prohibiting these wrongs only by unions [in the rare cases where they would be committed for the benefit of the unions], and did not have the purpose of making it criminal for the responsible officers of those unions to commit such offenses? If so, it would have the effect of encouraging individual wrongs while punishing such acts only if the whole membership of the union profited thereby collectively—a discrimination without either sense or justification." *United States* v. *Brennan,* 134 F. Supp. 42, 49 (D. Minn.).

[14] Respondent points out that "It has frequently been held that where a statute forbids a corporation or other legal entity to do an act, a corporate officer who causes the organization to violate the statute is himself guilty" (Br. in Opp., p. 5). But this hornbook rule is operative only when the legal entity is the principal actor. Where the labor union official is acting on his own, or for personal gain, the principle invoked by respondent would, of course, have no application.

II

THE LEGISLATIVE HISTORY OF SECTION 302 SUPPORTS THE VIEW THAT THE TERM "REPRESENTATIVE" IS NOT LIMITED TO COLLECTIVE BARGAINING AGENTS

The evolution of Section 302 from its original conception in the Case bill (H. R. 4908, 79th Cong.) to its enactment in the Taft-Hartley Act reinforces the conclusion that "representatives" carries its ordinary meaning and embraces labor union officers. That history affirmatively shows that, while regulation of union welfare funds was a significant motive for the legislation, that purpose was only part of a more general desire to protect the integrity of the collective bargaining process by prohibiting financial payments by employers to unions or union representatives, except under specified conditions.

Section 302 had its origin in an amendment to the Case bill which Senator Byrd proposed from the floor in the 79th Congress. It was the purpose of the Case bill, as recited in its preamble, "to encourage settlement of disputes between labor and management by collective bargaining and by conciliation, mediation and voluntary arbitration, thereby minimizing industrial strife, strikes and lock-outs."[15] When the Case bill came before

[15] H. R. 4908, 79th Cong., as passed by Congress on May 29, 1946 (92 Cong. Rec. 5957, 6071).

the Senate, Senator Byrd moved to insert the following amendment (92 Cong. Rec. 4809):

> SEC. 8. (a) It shall be unlawful for any employer to pay or deliver, or to agree to pay or deliver, any money or other thing of value to any representative of any of his employees who are engaged in commeree or in the production of goods for commerce.
>
> (b) It shall be unlawful for any representative of any employees who are engaged in commerce or in the production of goods for commerce to demand, receive, or accept, or to agree to receive or accept, from the employer of such employees any money or other thing of value.
>
> (c) The provisions of this section shall not be applicable (1) with respect to any money or other thing of value payable by an employer to any representative who is an employee or former employee of such employer, as compensation for, or by reason of, his services as an employee of such employer, or (2) with respect to any amounts deducted from the compensation of any employee and paid to a labor organization by an employer in payment of dues or other similar fees payable by such employee to such labor organization.
>
> (d) Any person who willfully violates any of the provisions of this section shall upon conviction thereof be subject to a fine of not more than $10,000 or to imprisonment for not more than 6 months, or both.

(e) [Provision for injunction].

(f) [Definition of "goods" and "produced"].

Senator Byrd explained briefly that the purpose of his amendment was to prohibit the payment of royalties to a labor union such as were in dispute between the coal miners and mine operators in 1946. 92 Cong. Rec. 4891.[16] During the debate on the amendment, the Senator frequently stressed that its prohibition against employer payments covered payments to union officers as well as to unions and covered corrupt payments as well as legitimate ones. 92 Cong. Rec. 4892–4895. He said:

> I am endeavoring to strike at the attempt of *representatives of labor* to obtain payments from employers in excess of the salaries paid their employees, and use such payments in establishing funds over which no one but the *labor representatives* would have any control. * * *
>
> * * * * *
>
> My amendment would prevent an employer from paying a royalty to *the representative of a union.* He would be clearly liable, under the provisions of this amendment, if he paid a royalty or other money *to the representative of a labor union,* the

[16] He also said at this time (92 Cong. Rec. 4891): "The term 'representative' includes an individual who is a labor representative as well as a labor organization * * *".

purpose of which was to bribe that representative. * * *

* * * * *

Mr. President, I shall not labor this matter any longer at this time. It probably will be discussed further.

I merely desire again to emphasize that all the amendment does is to prohibit *the representatives of a labor union* from receiving from an employer a specific sum of money. * * *

* * * * *

I will say that the only prohibition here is from making a payment to a representative of the employees, and that means *a representative of the union.* * * * [Emphasis added.]

Despite Senator Byrd's protest that his amendment would not prevent an employer from making contributions to ordinary employee functions, such as a baseball team, some Senators continued to object that the term "representative" was so broad that it would prohibit these innocuous employer contributions. 92 Cong. Rec. 4896. To allay their fears, Senator Byrd modified his amendment by adding a definition of "representative" which provided (92 Cong. Rec. 5040–1):

(f) * * * (3) "Representative" means any labor organization which, or any individual who, is authorized or purports to be authorized to deal with an employer, on behalf of two or more of his employees,

concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work; and any other organization or fund of which a majority of the officers are representatives or are members of a labor organization or appointed by a representative.

Senator Byrd explained this modification as follows (92 Cong. Rec. 5040–1):

> The fourth and last modification inserts a definition of "representative" in order to meet some of the objections that were raised in debate with respect to an employer who gives money or other things of value to an employee baseball team or a picnic or outing of his employees. The term "representative" is defined to mean any labor organization or any individual who is authorized to deal with an employer on behalf of his employees concerning labor disputes, etc., and includes any other organization or fund of which a majority of the officers are representatives or are members of a labor organization or are elected or appointed by a representative. This last provision is inserted to close a possible loophole whereby a corporation or other legal entity could be set up and have royalty or other funds paid to it instead of to the union. That might be a possibility under the language as now used in the amendment. The perfecting modification which I now offer will make unlawful the payment of money to any such organiza-

> tion or fund unless employers have at least equal representation with its employees in the administration of such organization or fund, except where the employees contribute more than half to its support.

The effect of this definition was to restrict and narrow the meaning of "representative" in the amendment from the broad meaning it was ascribed in Section 2 (6) of the Case bill which defined it in the same words as it is now defined in Section 2 (4) of the Labor Relations Act as amended (*supra,* p. 6). But even this restrictive definition covered labor leaders like respondent. See Senator Byrd, quoted *supra,* p. 34, and Senator Taft, 92 Cong. Rec. 5466 ("a negotiator").

The Case bill, with the Byrd amendment containing the definition of "representative", was passed by the Senate (92 Cong. Rec. 5739) and referred to the House which accepted the Senate amendments. 92 Cong. Rec. 5946. The President vetoed the bill (92 Cong. Rec. 6674–6678) and it failed to pass over his veto (92 Cong. Rec. 6678).

The 80th Congress, like its predecessor, also undertook to revise the Wagner Act. Congressman Hartley introduced H. R. 3020, which was referred to the House Committee on Education

and Labor. 93 Cong. Rec. 3318. The broad purpose of this bill, as stated in its title, was:

> A Bill to prescribe fair and equitable rules of conduct to be observed by labor and management in *their relations with one another* which affect commerce, to protect the *rights of individual workers in their relations with labor organizations* whose activities affect commerce, to recognize the paramount public interest in labor disputes affecting commerce that endanger the public health, safety, or welfare, and for other purposes. [Emphasis added.]

This bill, like the Case bill, attempted to cure some of the evils in industrial relations thought not to be rectified by the original National Labor Relations Act. It recognized separate and distinct interests for the individual worker, the union, the employer, and the public, and it also tried to preserve and protect each such interest from intrusion and corruption by the others. It established rights for individual workers (Section 7 (a)) and sought to protect them from improper domination by unions. Sections 7 (a) and (b). It protected the union from what it conceived to be interference by the employer (Section 8 (a)) and employers from certain union activities (Section 8 (b)).

To achieve this separation of diverse interests and to protect the integrity of each, H. R. 3020 sought to proscribe corrupting financial trans-

actions between them. While it did not contain an exact prototype of present Section 302, Section 8 provided in part, that:

> 8 (a). It shall be an unfair labor practice for an employer—
>
> * * * * *
>
> (2) to dominate or interfere with the formation or administration of any labor organization * * * (B) by giving, or offering to give, any reward, favor, or thing of value *to any person in a position of trust* in such organization for the purpose of perverting his judgment or corrupting his conduct in respect to such organization * * *. [Emphasis added.]

The bill also made it an unfair labor practice for the employer to set up a check-off system unless authorized in writing by the employees or to make payments of any kind to a welfare fund in which the union exercised control. It is important to note that while the form is different, here, as in the Byrd amendment to the Case bill (*supra*, pp. 30–35), the sponsors of legislation designed to regulate union welfare funds coupled legislation for that purpose with a clear and explicit attempt to bar payments by employers to union representatives in their individual capacity in order to induce a breach of trust.

The Senate Committee on Labor and Public Welfare, to which H. R. 3020 had been referred after it had passed in the House (93 Cong. Rec.

3671), reported out an original bill, S. 1126, to accomplish the same object as H. R. 3020 (93 Cong. Rec. 3613). Though Section 8 of this bill also prohibited employers from interfering with unions by means of financial contributions, it did not refer either to check-offs or to welfare fund contributions. It simply restated Section 8 (2) of the Wagner Act when it provided:

> 8 (a). It shall be an unfair labor practice for an employer—
>
> * * * * *
>
> (2) to dominate or interfere with the formation or administration of any labor organization or contribute financial or other support to it. * * *

The Senate Committee, in its report on S. 1126, stated that it did not see fit to alter this provision (S. Rep. No. 105 (80th Cong., 1st Sess.), p. 12).

A minority of the Committee, including Senators Taft, Ball, Donnell, Jenner and Smith, filed their "Supplemental Views" on this bill in which they expressed their view that the failure of the Committee to cover employer payments to union trust funds left a definite evil in labor-management relations inadequately covered. S. Rep. No. 105, pp. 50–56. They declared their intention to introduce four curative amendments from the floor of the Senate. The third amendment they proposed was to insert in the bill "a provision regarding so-called welfare funds similar to the section in the Case bill approved by the

Senate at the last session." S. Rep. No. 105, p. 52. They stated that (*ibid.*):

> * * * we believe it is imperative that where such funds are in existence or are agreed upon by collective bargaining, they should not be subject to racketeering or arbitrary dispensation by *union officers.* Without such restraints, employees would have no more rights in the funds supposedly established for their benefit than their union leaders choose to allow them. They may well become a mere tool to increase the power of the *union leaders* over their men, and even be open to racketeering practices. [Emphasis added.]

When S. 1126 came up for debate, Senator Ball introduced the promised amendment. It was couched in language similar to that in the Byrd amendment (Section 8 of the Case bill as it had passed the Senate, *supra*, pp. 31–32), including as subsection (g) a definition of "representative." It did, however, adopt from H. R. 3020 (Representative Hartley's original bill) the idea that checkoff payments should be permitted only if authorized in writing, and it wrote in a regulation that welfare funds should be trust funds controlled by representatives of both the employer and employees. Senator Ball, on introducing this amendment which ultimately became present Section 302, stated (93 Cong. Rec. 4678):

> Mr. President, the sole purpose of the amendment is not to prohibit welfare funds,

> but to make sure that they are legitimate trust funds, used actually for the specified benefits to the employees of the employers who contribute to them, and that they shall not degenerate into bribes. * * * I myself think that unless we make sure that such funds, when they are established, are really trust funds and are actually used for the benefit to employees specified in the agreement, there is very grave danger that the funds will be used for the *personal gain of union leaders,* or for political purposes, or other purposes not contemplated when they are established, and that they will in fact become rackets. [Emphasis added.]

Not only does this statement of Senator Ball reveal a purpose to reach union leaders by the prohibition, but it also serves to highlight the fact that this amendment was designed to subserve the basic policies of the entire bill by protecting the interests of the individual worker, the union and the employer from interference and corruption by the other interests.[17]

---

[17] A provision similar to the Ball amendment had been included in an earlier bill (S. 55), sponsored by Senators Ball, Taft, and Smith. At the Committee hearings on this and other labor bills, Senator Taft expressed the view that it covered payments to union representatives of the type involved here. See the colloquy between Senators Taft and Pepper in *Hearings before the Committee on Labor and Public Welfare, United States Senate, 80th Cong., 1st Sess., on S. 55 and S. J. Res. 22*, etc., at pp. 52–53. President Green of the American Federation of Labor was apparently of the same view. See *Hearings, ibid.*, at pp. 918, 1041.

Though most of the debate on the Ball amendment focused on the welfare fund exception, it would be error to conclude that welfare fund control was its sole purpose.[18] The court below relied heavily on the fact that much of the dis-

[18] As we have suggested in Point I (*supra*, pp. 19–22, 28), to say that the sole purpose of the Ball amendment was to regulate union welfare funds leaves unexplained the format of this section which begins with two blanket prohibitions. As has been explained (*supra*, pp. 35–37), the prohibitions of subsections (a) and (b) of Section 302 had their origin in Section 8 of H. R. 3020. The House Committee on Education and Labor in H. Rep. No. 245 (80th Cong. 1st Sess.) to accompany H. R. 3020, stated, at pages 29–30, that the prohibition on employer's contributions to unions was to deny to the National Labor Relations Board such employer assistance as a basis for showing favoritism to affiliated unions over independent unions as had often been charged. Though the Senate Committee on Labor and Public Welfare in S. Rep. No. 105 (80th Cong., 1st Sess.) to accompany S. 1126, did not alter the NLRA prohibitions against employer assistance to unions, it recognized, at page 12, the validity of the reasoning of the House Committee when it wrote: "* * * It has been the contention of leaders of the independents for many years that the Board had one rule for independent unions and another one for organizations affiliated with the A. F. of L. or CIO. There is no doubt that since the passage of the National Labor Relations Act, independent unions have dwindled greatly in number. To the extent that this change has come about through the provisions of Section 8 (2), which forbids employers to dominate or contribute financial or other support to labor organizations, the committee has not seen fit to make any changes in the present act." Only by so understanding subsections (a) and (b) of Section 32 as attempting to preserve the integrity and equality of all unions from outside interference and corruption can all the exceptions be reconciled with each other. See *supra*, pp. 19–24.

cussion centered on the need to regulate welfare funds to support its conclusion that "representative" as used therein was a word of art meaning only the collective bargaining agent of the employees. The dissenting opinion of Judge Hand avoided this error by putting the welfare fund discussion in its proper perspective. He said (R. 42):

> * * * The principal discussion was indeed about contributions to a union's treasury; and that was true as well of the "Case Bill",—the predecessor of the Act before us—as of the Act itself. The absence of much discusion about preventing the kind of offence here prosecuted, seems to me not at all suprising; there could have been no opposition to it, except that in fact made, it might cover innocent payments.

Because no reference was made in the "Supplemental Views" of Senator Taft and his colleagues (*supra*, pp. 38–39), or during the debates, to the exceptions in favor of payments for wages, payments for goods bought in the usual course of business, payments in settlements of claims and awards, and check-offs of union dues cannot mean that they are less important than the welfare fund exception or must be disregarded. All the exceptions stand in *pari materia* under the prohibitions and must be read together. See *supra*, pp. 19–24.

Since the Ball amendment to S. 1126 was patterned after and served the same purpose as the

Byrd amendment to the Case bill in the 79th Congress, the reasoning that prompted the adoption of the Byrd amendment (*supra*, pp. 31–35) is germane to the Ball amendment;[19] and it should be recalled that the Byrd amendment undoubtedly covered payments to individual union officers. As noted *supra*, pp. 33–35, a special definition of "representative" was inserted in the Byrd amendment to give the term narrower scope than it possessed in the rest of the Case bill. But since the narrow meaning of "representative" in the Ball amendment—borrowed from the Byrd amendment—clearly encompassed union officers and other nonbargaining agents of employees (*supra*, pp. 33–35, 39–42), it follows that the same term, when broadly used elsewhere in the Labor Management Relations Act, must also include them.

The fact that the conference report retained the Ball amendment but deleted subsection (g) which specially defined "representative" (H. Rep. No. 510 (80th Cong., 1st Sess.)) thus has none of the significance given it by the majority below (R. 37, 39). The omission of a restrictive definition

[19] During the debate on the Ball amendment, Senator Taft, one of its leading sponsors (*supra*, p. 38), stated that the proposal would apply "in a case of extortion or a case where the union representative is shaking down the employer * * *" (93 Cong. Rec. 4746).

Senators Ives and Pepper engaged in a colloquy, during the debate, which clearly indicates that they believed the amendment to cover payments to individual labor leaders. See R. 22, 37, 42.

of "representative" simply meant that the term would have the same broad meaning as it has under the general definition of "representative" in Section 2 (4) of the National Labor Relations Act, as amended (*supra*, p. 6). As shown in Point I, that broad definition clearly includes an individual labor leader. *Supra*, pp. 17–27. Therefore, the omission of the special definition, if it means anything at all, must have enlarged rather than narrowed the scope of Section 302. In actual fact, the Conference Committee remarked that it adopted the provisions of the Senate amendment (which inserted Section 302) "with minor clarifying changes" (H. Rep. No. 510, p. 67), thus indicating that it did not view the change in the definition of "representative" as substantial.[20]

As this survey shows, from the Byrd amendment in the 79th Congress to the final version of Section 302 in the 80th Congress there runs the consistent aim to reach improper payments by employers to union leaders and other employee

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[20] Respondent argues (Supp. Br. in Opp., pp. 4–5; see also R. 39) that the alteration which it says resulted from the definition change was not substantial, "viewing the section as a whole", and was therefore unmentioned by the Conference Committee. But a change which, on respondent's view, narrowed the coverage of Section 302 from all unions and union officers to unions alone could not be regarded as minor or insubstantial, on any theory. For if respondent is right, that single "minor clarifying" change drastically reduced the coverage of the section.

representatives. This was certainly one goal of the Byrd amendment in all its forms; the Hartley bill in the 80th Congress, as passed by the House, sought to attain the same end by declaring the the giving of such gratuities to be an unfair labor practice; when the Senate Committee deleted this provision, the Ball amendment reinstated its substance in the form of a criminal provision like the earlier Byrd amendment; and in this version it was passed by the Congress. It would wholly frustrate this consistent aim for the Court to limit "representative", as it is used in Section 302, to labor organizations. But if the term is given its normal meaning, the legislative purpose of preserving the collective bargaining process from the corrupting influence of employer payments to labor leaders will be properly fulfilled.

CONCLUSION

It is therefore respectfully submitted that the decision of the court below should be reversed.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1955

No. 281

UNITED STATES OF AMERICA,

Petitioner,

v.

JOSEPH P. RYAN,

Respondent.

ON A PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

BRIEF FOR RESPONDENT IN OPPOSITION

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ON A PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

BRIEF FOR RESPONDENT IN OPPOSITION

Statement

While making no claim that corruption, bribery or extortion was any part of the record of this case, petitioner seeks to cast an aura of secrecy and surreptitiousness around the transactions in question by an overly narrow statement of facts. It was the testimony of the Government's witnesses that the envelopes given to respondent were typed by a company stenographer in an open office and that his was but one of many names on the firm's Christmas list (R. 48-49). The envelopes were given to respondent in his own office in the union headquarters by James C. Kennedy who first announced himself to the union's receptionist and then passed through a public waiting room (R. 67-69).

There was no testimony as to the purpose of the giving of money by Kennedy or its receipt by respondent. No evidence exists as to whether the moneys were personal gifts to respondent destined for his own use or contributions to some cause in which he was interested. The only testimony on this score is Kennedy's flat statement that respondent never solicited or requested anything (R. 60).

On the basis of this record, the trial judge expressly announced that he could see no evidence of corruption (R. 323-326); his decision rested on the theory that the statute was *malum prohibitum*. The Court of Appeals agreed with him that there was no question of corruption involved, but found it unnecessary to consider whether intent or purpose was an element of the crime.

The facts relevant to the decision below and the issue which petitioner seeks to have reviewed here are not disputed; indeed they were stipulated prior to trial. Admittedly the International Longshoremen's Association, a labor organization, was the recognized bargaining representative of longshore employees within the meaning of the National Labor Relations Act. No individual occupied this status at any time. Respondent during the years covered by the indictment was President of the International Longshoremen's Association (R. 20-25). The question sought to be reviewed is whether he was a "representative" of employees within the meaning of Section 302(b) of the Taft-Hartley Act.

Summary of Argument

The petition for a writ of certiorari should be denied as inappropriate and lacking in merit, since the Court of Appeals correctly construed Section 302. The term "representative" in that section is defined in Section 501(3)

of the LMRA in terms of its "meaning when used" in the amended NLRA. As used in the NLRA with reference to a "representative of employees", the word "representative" invariably refers to the exclusive bargaining representative of an appropriate unit of employees and does not cover a union official. The structure of the Taft-Hartley Act and the language and meaning of Section 302 itself further emphasize the correctness of the decision below.

The legislative history confirms that the purpose of Section 302 was not to bar "sell-outs" by faithless union officials but to limit the area of collective bargaining by curbing certain payments on the part of employers to labor organizations, principally in the field of welfare and pension funds. This purpose has been effectuated in practice and is furthered by the decision of the Court of Appeals herein.

The writ should also be denied as inappropriate, since the decision of the Court of Appeals specifically left undecided serious factual, legal and constitutional questions raised by respondent. In the circumstances this Court is being asked to render an opinion which might well be advisory only.

The effect of the Government's contention herein would be to bar all gifts from employers to union officials irrespective of purpose, motive, amount or circumstances. Such a result would have no relationship to the purpose ostensibly attributed to the statute by the Government, that of preventing the betrayal of employees by faithless union officials.

A further result of the Government's broad and sweeping contention herein would be to oust the states com-

pletely from their traditional jurisdiction over extortion by and bribery of union officials or to create a federal crime duplicating a state crime and enabling both federal and state penalties to be imposed for the same act. In addition, adoption of the Government's contention would permit conviction under two federal acts, the Hobbs Act and the Taft-Hartley Act, for precisely the same conduct.

ARGUMENT

POINT I

The petition should be denied because the Court of Appeals correctly held that respondent was not a "representative of employees" within the meaning of Section 302 of the Taft-Hartley Act.

A

The language, structure and purpose of the Taft-Hartley Act compel the construction adopted below.

The opinion of the Court of Appeals presents so soundly and cogently what we believe to be the correct construction of Section 302 that little need be said in addition thereto. As that opinion demonstrates, the word "representative" is defined in Section 501(3) of the Act in terms of its meaning in the amended NLRA. Turning to the NLRA to ascertain the meaning of "representative" with reference to a "representative of any employees" "we discover that there invariably it means a 'representative' selected by a majority of the employees, in an appropriate unit, as their exclusive bargaining representative"

(Opinion below, 11a).[1] The word "invariably" is an apt one; there are no exceptions. Moreover, it is clear that this is the only meaning possessed by the word "representative" with reference to a "representative of employees" and that such a "representative", within the meaning of the amended NLRA and each use of the term therein, cannot and does not cover a union official. In the case at bar the statutory "representative of employees" is the International Longshoremen's Association, not respondent.

One false issue raised in the Government's petition should be disposed of. It is argued that the decision below emasculates the statute "since labor organizations, as legal entities, can only act through their officers or agents" (petition, p. 9). This argument confuses two situations. It has frequently been held that where a statute forbids a corporation or other legal entity to do an act, a corporate officer who causes the organization to violate the statute is himself guilty. And it may well be that if a "representative of employees", in this case the International Longshoremen's Association, had received money from an employer, the officer responsible would be liable under Section 302.

But that is not the situation at bar. Here the statute was intended to cover only a "representative of employees", and unless such a "representative" received money, neither the representative itself nor any of its agents has violated the law. Here there is no evidence, and no contention by the Government, that the moneys allegedly given respondent were received on behalf of the union or were turned over by him to the union treasury.

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[1] Page references to the opinions below refer to the appendix to the petition herein where those opinions are set forth in full.

The result is not that the nature of a labor organization permits evasion of the statutory purpose, but rather that receipt of moneys by a statutory "representative" is the only act intended to be prohibited; such receipt by a union official was never contemplated as being within the statutory scope.

That this construction does not prohibit extortion by and bribery of union leaders is not emasculation of the statute unless it be assumed that such was the statutory aim. When it is seen that Congres in this section was seeking to accomplish an entirely different objective, it is apparent that the statutory purpose has been effectuated and that its potency is not diminished one whit by the decision below.

Nor can it be said that a construction which properly gives effect to the meaning of a statute in accordance with the statutory purpose "unduly narrows" that statute (petition, p. 8), simply because it fails to accomplish an object which the Government deems desirable. "We are not unmindful of the public interests, of the insistent hope and need that the ways of bribers and corruptionists shall be exposed to an indignant world. Commanding as those interests are, they do not supply us with a license to palter with the truth or to twist what has been written in the statutes into something else that we should like to see." Cardozo, *C. J.*, in *Matter of Doyle*, 257 N. Y. 244, 268 (1931). See also *Anderson* v. *Wilson*, 289 U. S. 20, 27 (1933).

The petition herein (p. 10), like the dissenting opinion below, makes much of Section 2(4) of the NLRA which provides that the term representative "includes any individual or labor organization". Obviously not all individuals or labor organizations in this nation are "repre-

sentatives", and the NLRA definition, by using the verb "includes", does not purport to embrace all such persons or bodies within its scope. Nor does Section 501 of the Taft-Hartley Act refer to Section 2 of the NLRA or to any NLRA "definition" of the key term, but rather to the "meaning when used" in the amended NLRA. In the words of the opinion below, "We thereby learn [from Section 2(4)] what 'representative' *includes*. To understand what it *means* . . . we must . . . turn to the many sections of the amended NLRA where 'representative' is so used." (Emphasis supplied.)

An examination of the substantive provisions of the NLRA makes clear that the "individual" referred to in Section 2(4) as a possible "representative" is not a union official but an individual acting as representative of the employees in a unit in lieu of a labor organization. Thus Section 8(d) of the NLRA provides:

> "The duties imposed upon employers, employees, and labor organizations by paragraphs (2), (3) and (4) of this subsection shall become inapplicable upon an intervening certification of the Board, under which the *labor organization or individual*, which is a party to the contract, has been superseded as or ceased to be the *representative* of the employees . . ." (Emphasis supplied.)

And Section 9(c)(1) provides:

> "Whenever a petition shall have been filed in accordance with such regulations as may be prescribed by the Board—
>
> (A) by an employee or group of employees or any individual or labor organization acting in their behalf alleging that a substantial number of em-

> ployees (i) wish to be represented for collective bargaining and that their employer declines to recognize their *representative* as the *representative* defined in subsection (a) of this section, or (ii) assert that the *individual or labor organization*, which has been certified or is being currently recognized by their employer as the bargaining *representative*, is no longer a *representative* as defined in subsection (a) of this section; or
>
> (B) by an employer, alleging that one or more *individuals or labor organizations* have presented to him a claim to be recognized as the *representative* defined in subsection (a) of this section; . . ." (Emphasis supplied.)

The Government in effect concedes that each and every time the word "representative" is used in the NLRA with reference to a "representative of employees", it has the meaning contended for by us; therefore we have not analyzed individually the various uses of that term.[2] Petitioner argues, however, that this is not because of the

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[2] The principal ground of the dissent below—never raised by the Government in either the trial court or the Court of Appeals and not urged by it herein—is that the definition of "labor organization" in the NLRA is sufficiently broad to include an individual. While we believe this view to be answered completely by the majority below (12a-13a), we fail to see its relevance even if its correctness be assumed *arguendo*. For the key term to be construed is "representative" not "labor organization," and it does not advance the argument to claim that an individual may be a "representative" by being a labor organization. He may be a "representative" directly, without involved reasoning, by the simple, clear provisions of Section 2(4) of the NLRA and the substantive provisions of that Act. The question is whether this language refers to a union officer or to an individual acting as "representative" in lieu of a labor organization, and on this score the dissent furnishes no support to petitioner. We think it clear from a reading of the statute that the latter is the correct construction.

meaning of the term but because it is always modified by "limiting" phrases such as "for the purpose of collective bargaining" or "as provided in section 9(a)". The short answer to this contention was given by the Court of Appeals: "That is not true" (12a); and the opinion goes on to cite several sections in which the word is not so modified and yet unquestionably refers only to the statutorily created exclusive bargaining representative.[3]

Petitioner relies heavily on uses of the word "representative" outside of the NLRA and in a context other than "representative of employees," the only type of "representative" referred to in Section 302 (petition, pp. 13-14). The Government fails to note that under the Taft-Hartley Act, as under the original Wagner Act, "representatives of employees" are unique. Nothing in this law or any other purports to tell employers, the public, business, industry or finance (to take petitioner's own examples) how they shall choose their representatives in their economic dealings with others; nowhere are these other groups combined by law into appropriate units with elaborate mechanics prescribed for the election of "representatives" under Government auspices; and with the "representative" chosen by the majority being the exclusive "representative," for the minority who would have preferred another as well as for the majority.

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[3] In several instances the phrases relating to "representative" in the amended NLRA were intended as phrases of limitation, but not at all in the sense urged by petitioner herein. Under the scheme of the NLRA a "representative of employees" may become such in two ways: through voluntary recognition or through certification by the NLRB. As this Court pointed out in *American Communications Association* v. *Douds*, 339 U. S. 382 (1950), several provisions of the NLRA distinguish between certified and recognized representative in the rights conferred and liabilities imposed. Some of the phrases relied upon by petitioner were intended to make the provision in question applicable only to certified representatives. Section 302 is applicable to both certified and recognized representatives.

And yet this is precisely what the Act does in the case of employees, and only employees. To argue, therefore, that the word "representative" when used with reference to employers, the public, or other groups in the community does not have the meaning for which we contend is to miss the entire point of the Act and what it accomplishes. Whatever may be the meaning of the word with reference to these other groups, Section 302 deals only with a "representative of employees" and here the meaning is clear, precise and uniform throughout the statute. It does not cover a union official when the union itself is the employee representative.

Indeed, we fail to see how the single word "representative" could be construed to cover both the union and its various officials, to say nothing of other unspecified categories of persons, as contended by petitioner. The union and its officials are entirely separate, both practically and juridically. The union, when acting as statutory "representative", is the agency directly responsible to the employees and subject to their control through the provisions of the amended National Labor Relations Act. The officers are the agents of the union, appointed or elected, with no necessary direct responsibility or accountability to the employees. One acts as the principal, the other as an agent. Their respective rights, powers, duties and obligations differ completely. Each is specifically referred to and separately described in the LMRA. Thus, the union is described by a specific term, "labor organization", its officers are referred to in the statute as "officers" [NLRA Sec. 9(h)] or "agents" [NLRA Sec. 8(b), LMRA Sec. 301(b)] and when it is desired to extend the statutory coverage to both the union and its officials, the clear phrase "a labor organization or its agents" is used [NLRA Sec. 8(b)]. A single word, "representative",

undefined except in terms of its NLRA meaning, cannot conceivably be held to encompass both types of entity, and the statute makes no attempt to do so.

Turning now to Section 302 itself, that section supports fully the statutory construction of the Court of Appeals. At the outset Congress prohibited *all* receipts of money by an employee representative from an employer. The intent was to bar all payments to a union treasury unless made in accordance with the exceptions enumerated and under the specific conditions there set forth. Through this section Congress sought to eliminate the growing practice of employee representatives in using their tremendous bargaining power to force employers to make huge payments to them, usually for welfare or pension funds. These funds, however, were administered solely by the union with little or no restriction, and Congress feared that, rather than being expended for the benefit of the employees who earned them, they were being accumulated as union "slush funds" or "war chests." While Congress at the time had in mind principally welfare and pension funds, and primarily those of the United Mine Workers, the section was designed to limit the area of collective bargaining by prohibiting all such payments in whatever form. Thus, for example, a guaranteed annual wage fund could not be established, in the light of Section 302, by employer payments to the employees' representative and the establishment of a fund held and administered solely by that representative.[4]

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[4] This does not mean that we contend, as the dissenting judge below erroneously thought, that Section 302 "covers no payments but those made in the course of negotiation and to a bargaining agent of the union for the union" (20a). The section prohibits payments to a true statutory "representative" whenever made, and whatever the circumstances (subject to the five exceptions and to the word "wilfully" in so far as criminal liability is concerned).

After prescribing the general prohibition Congress then set forth the exceptions, and the only exceptions, to that prohibition. Since "representatives of employees" could be either labor organizations or individuals (see cases cited by Court of Appeals majority at 11a), Congress had to set forth all exceptions which it thought appropriate to make available to either type of representative or both. As the opinion below demonstrates, and as petitioner concedes, most of these apply solely to representatives which are labor organizations, one or two apply to both types, and the remaining one or two apply only to those representatives who are individuals. If the exceptions relating to individuals had been omitted, employees could not select as their representative a fellow employee in their own appropriate bargaining unit, and hence the full, unlimited freedom in the choice of representatives, intended to be conferred by the NLRA, would by this Section be denied. Nothing in the Section's structure or language, however, lends support to petitioner's contention that the exception applicable to an individual refers to an individual labor leader rather than an individual who is an "employee representative" in the statutory sense.

Not only is Section 302 consistent with the construction of the statute adopted by the Court of Appeals, it compels that construction. For sub-section (c)(5) thereof, the most important exception, refers to a "trust fund established by such representative," that is the representative whose receipt of money is prohibited in sub-section (b). It is common knowledge that employees' trust funds are not established by union leaders but by the union itself, together with the employers, and that union officials are not even parties to such indentures. This was proven as a factual matter in the instant case with respect to the

longshore industry, and the relevant welfare and pension agreements were introduced in evidence (R. 106-112).

Petitioner is in error when it asserts (Petition, p. 11) that Section 302 (c)(5) uses the term "representative of employees" in relation to the administrators of the trust fund. Here, as everywhere else in the Act, the key phrase refers to the bargaining representative in the statutory sense.

A reading of the statutory language in question, Section 302 (c)(5)(B) discloses that this provision refers throughout, except in one clause, not to the day-by-day administration of the trust fund by the trustees, but to the initial agreement between the employer and the bargaining representative establishing such fund. This applies to the optional designation of neutral persons, to the requirement that "such agreement provides" for an impartial umpire or the appointment of an umpire by the district court, and to the requirement that such agreement "shall also contain provisions for an annual audit".

Only at one point is reference made in Section 302 (c)(5)(B) to the administration of the fund by the trustees. And there the term used to describe such administrators appointed by the union and the employers is not "representative" but "employer and employee groups". Hence the word "representative" is given its true and consistent statutory meaning and the union-appointed trustees are described by another term entirely, "employee group".

B

The legislative history of Section 302 supports the construction adopted by the Court of Appeals and refutes that advanced by petitioner.

Petitioner asserts that "The majority opinion below relies heavily upon the legislative history of Section 302" (petition, p. 15). This is inaccurate; the opinion below rests on the statute itself. What the majority did say, after first concluding from an analysis of the statute that the conviction must be reversed, was this: "The government makes much of the legislative history. But, so far as it illuminates, it tends strongly to support defendant's contention" (13a).

As the opinion below convincingly demonstrates, the legislative history of Section 302 makes it amply clear that at the time of the enactment of the statute, the only time that counts, no Congressional purpose existed to prohibit payments to union officers or agents. Practically all the Committee reports and Congressional debates concerning Section 302, running into the hundreds of pages, are devoted to a consideration of union welfare funds, whether or not they should be regulated, and if so, the standards to be applied. This applies to the Taft-Hartley bill itself and to the Case bill, considered in the previous session of Congress, which contained a similar proposal. Throughout the Congressional debates and the Committee reports, the section is referred to as a provision for the regulation of welfare funds. To a much lesser extent there is evidenced a Congressional desire to limit check-off payments to labor organizations. In these two

purposes lies Congressional intent, not in any supposed prohibition of "pay-offs" to union officers.

The history of the separate definition of "representative" originally made a part of Section 302, its deletion by the Joint Conference Committee, and the inclusion by that Committee of the word "representative" in Section 501(3) as among those defined in terms of its NLRA meaning are all chronicled so completely by the Court of Appeals that repetition here would serve no purpose. Also set forth are the expressions of Congressional intent with respect to Section 302 and the reasons for the changes made therein by the Joint Conference Committee. Many more references to the Congressional Record might be cited to support the clear statement of purpose made by Senator Ball, sponsor of the section, and quoted in the majority opinion below at 18a. *E. g.*, 92 Cong. Rec. 4891 (Byrd) 4893 (Byrd) 4894 (Byrd), 5340 (Taft), 5345 (Ball), 5428 (Taft) (1946); 93 Cong. Rec. 4678 (Byrd), 4678 (Ball), 4746-7 (Taft), 5015 (Ball) A2252 (Ball) (1947).

The significant thing about the debates on both the Byrd Amendment and Section 302 as introduced by Senator Ball is not the meaning ascribed to the word "representative" in that proposal—since the ultimate use of that term in the LMRA differed completely in both language and context from its Byrd Amendment meaning—but the fact that the key differences between the separate definition of "representative" contained in the Byrd Amendment and the NLRA meaning of the same word did not go unrecognized. For example, Senator Wayne Morse strenuously objected to the separate definition of "representative" originally contained in Section 302, pointing out its variance from the NLRA meaning of the term and the consequences of this new definition

to the NLRA concept of a single, exclusive employee representative. 92 Cong. Rec. 5474 (1946). From these remarks, three things are plain: first, that Senator Morse recognized the obvious fact that the word "representative" in the NLRA meant the exclusive representative chosen as such by a majority of employees in a unit; second, that he thought there were grave dangers in having the Byrd Amendment meaning of that term vary from that of the NLRA; and third, that he understood that if the meaning of "representative" in the Byrd Amendment were brought into conformity with the meaning in the NLRA, then the applicability of that term would be restricted to the exclusive majority representative of a bargaining unit in the same sense that the word is used throughout the NLRA. This he apparently thought to be desirable, and this is what was eventually done in the Taft-Hartley law.

Senator Ball, too, when he first introduced Section 302 as an amendment to the Taft-Hartley bill, took pains to point out that the meaning of "representative" in his proposal differed from that in the NLRA. (See Court of Appeals majority opinion at 15a.)

In view of these facts it is apparent that any statement made by any Senator in the course of debate has no bearing on the resolution of the issue at bar. For however similar the remainder of Section 302 of the law may be to Section 302 of the bill debated by the Senate, the meaning and definition of the word "representative" was most definitely changed prior to passage of the Act. There were no relevant debates on Section 302 after the Conference Committee reported, and under no circumstances can a statement concerning the bill before the Senate made prior to the Conference Report be used to

provide the meaning of that word in the final Act of Congress.

The petition herein (pp. 17-20) argues that the definition of "representative" was originally inserted in the Byrd Amendment in an effort to narrow the scope of the word, and several quotations are set forth from Senatorial remarks prior to the inclusion of this definition. It is important to realize, however, that the Byrd Amendment and the Case bill as a whole were not intended to tie in closely with the National Labor Relations Act or to constitute a revision of that Act as was the Taft-Hartley law. The Case bill was entitled the "Federal Mediation Act of 1946" and none of its terms including "representative" in the Byrd Amendment, was ever defined in terms of its NLRA meaning. Hence it would by no means follow, even absent the special definition of "representative" in the Byrd Amendment, that the meaning of that word in the Case bill would be the same as in the National Labor Relations Act.

And even if it be assumed *arguendo* that the definition of "representative" was added to the Byrd Amendment in order to narrow scope and thus set at rest the fears of some Senators, petitioner is not aided thereby. What the Government overlooks is that the elimination of this definition from the Taft-Hartley bill by the Joint Conference Committee did not leave the term wholly undefined as it was in the Byrd Amendment as originally introduced. For this excision was accompanied by the insertion of "representative" in Section 501(3) as one of the terms defined by its NLRA meaning. In other words, if Senator Byrd inserted the definition of "representative" in his Amendment to allay fears and narrow the statutory scope, so the Conference Committee for the Taft-Hartley bill substituted for this definition the still

narrower meaning given the term in the NLRA, and for exactly the same reason. (See, for example, the reference in the Court of Appeals opinion at 15a to fears expressed by Senator Ives, who voted against the proposed Section 302, who was a member of the Joint Conference Committee, and who subsequently voted for the bill.)

Reference is made on pages 15 and [illegible] of the petition to a House proposal making it an unfair labor practice for an employer to bribe a union officer (H. R. 3020, 80th Cong., 1st Sess.), and an attempt is made to link this provision with Section 302. To consider fully the meaning, history and implications of this House proposal would unduly lengthen this brief, but the following summary observations should be made.

In the first place the House provision is not any part of the history of Section 302 and has no relation to the meaning and purpose of that Section. On its face, it clearly applies only to employers, it creates an unfair labor practice not a crime, and it specifically requires an intent to influence conduct. With respect to the issue at bar, the term used to describe the recipient of the bribe is not "representative of employees" but something entirely different. And most significantly of all, the purpose was not to protect the union or its members from faithless officials but to narrow the scope of the broad "company union" prohibition in the NLRA (thereby aiding employers, not employees) through an enumeration of the only types of conduct which would allow the NLRB to brand a union as company-dominated. House Rep. No. 245 on H. R. 3020, 80th Cong., 1st Sess.; House Conf. Rep. No. 510 on H. R. 3020, 80th Cong., 1st Sess.

The Government's misplaced reliance on this House proposal illustrates the essential fallacy of its entire

view of Section 302. Petitioner would read Section 302 as though it were designed to strengthen the bargaining power of unions by punishing faithless employees and preventing "sell-outs" to employers; looking at the other side of the coin, employers, under the Government's interpretation, would be curbed in their use of economic power to render unions subservient to them in their mutual dealings.

As the dissent below points out and as the government urges herein, this is a laudable aim with which few will disagree.[5] The only difficulty is that it was not the aim of Congress which was dealing with another subject matter entirely.[6] This will be clear upon a moment's reflec-

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[5] It should be added, however, that the section, as interpreted by the Government, goes far beyond this, with consequences the desirability of which would be questioned by many. Had Congress really been seeking to accomplish the aim attributed to it by petitioner, it would have used far more appropriate language, similar to that in the abandoned House proposal considered above. As to the suggestion (petition, p. 21) that a *malum prohibitum* provision was adopted because of supposed difficulties of proof, there is absolutely no evidence of this in legislative history, and questions of proof no more difficult and almost identical in nature are regularly prescribed in federal and state statutes with no apparent inability to convict.

[6] The petition's footnote reference (p. 21) to the report of the New York State Crime Commission, in which the transactions alleged in this indictment were first considered by a government agency, is to be deplored. That report came many years after the enactment of Taft-Hartley and is wholly irrelevant to its history or meaning. Nor is there any other evidence of Congressional fear that union bargaining power was being impaired by employer bribes or gifts. In view of the admitted absence of corruption, evil purpose or the like in this record, we protest petitioner's effort to drag this issue in by the back door through references to the proceedings of the New York State Crime Commission which, in the words of the experienced District Attorney of New York County, Hon. Frank S. Hogan, were based on "triple-plated hearsay," which gave no opportunity for cross-examination, and which were devoid of all protections commonly afforded the individual under Anglo-Saxon jurisprudence.

tion as to the ultimate purpose of the Taft-Hartley law and the philosophy underlying it. The whole purpose of Taft-Hartley was to correct an imbalance thought to exist between the economic power of labor and management and the restrictions placed upon the two groups by law. The Wagner Act had proceeded on the assumption that the superior economic power of management was thwarting the legitimate aspirations of employees, and therefore that Act conferred certain rights upon employees and their representatives while curbing some of the types of conduct theretofore engaged in by employers. No correlative restrictions were placed upon unions. By 1947 Congress felt that the pendulum had swung the other way, that the unrestricted economic power of unions now had to be curbed, and that the restrictions on employers should be loosened to enable them to compete with their employees' representatives on more even terms. [See, e. g., the "free speech" amendment to the NLRA, Sec. 8(c).]

Obviously the construction of Section 302 adopted by the Court below furthers the paramount purpose of Congress. And just as obviously the Government's contention is wholly inconsistent with that purpose. The intent attributed to the 1947 Congress by petitioner might have been appropriate if directed toward the legislature which adopted the Wagner Act. But it misconceives entirely the approach, philosophy and objectives of the Taft-Hartley Congress and would have the 1947 legislators seeking to further an end—the strengthening of the bargaining power of unions—which it was their express desire to discourage.

Petitioner's charge that the decision below has "emasculated" Section 302 (petition, pp. 8-9, 22) is not only inaccurate as a matter of construction but as a practical

matter as well. Because of the enactment of Section 302 in its present form, welfare funds and check-offs have been regulated in the manner desired by Congress. All such funds in industries affecting interstate commerce are in trust, reduced to a written agreement and administered jointly by employers and unions. The rights of the individual workers are specifically protected by the trust indenture. This has been done even in industries with the most powerful unions, including the United Mine Workers, the particular object of this provision. See *Van Horn* v. *Lewis*, 79 F. Supp. 541 (D. C. Dist. 1948). Similarly check-offs are no longer in effect in industries affecting interstate commerce except upon written permission of the employee affected, and then only for the period of time prescribed by the statute. The purposes of Section 302 have been fully accomplished.

It is true now, as it was in 1947, that the welfare funds which Congress sought to regulate result from direct payments by employers to labor organizations. They were then frequently used by these unions for general welfare purposes without being in trust and without any real limitation on their expenditure. It was felt by many that they were too often used as a "war chest" for union ends rather than the benefit of the workers, and also that discrimination was practised among the workers in allocating their distribution. See 93 Cong. Rec. 4746-7 (Taft) (1947).

These welfare funds, however, were never paid to union officers but only to the union itself and then only when the union was the "representative of employees" within the meaning of the NLRA. That this was recognized by Congress appears clearly from the legislative record. For example, in the Supplemental Report by five members of the Senate Labor Committee in which Section 302 was first considered (Senate Report No. 105, on S. 1126,

Supplemental Views, 80th Cong., 1st Sess., p. 52), the following appears:

> "The necessity for the amendment was made clear by the demand made last year on the part of the Union Mine Workers that a tax of 10 cents a ton on coal be paid to the *Mine Workers Union* for indiscriminate use for so-called welfare purposes." (Emphasis supplied.)

The only sense in which Section 302 was intended to curb the power of labor leaders was through the prohibition of the unrestricted receipt by unions of these moneys. In other words, John L. Lewis and other union officials were to be affected, not directly as payees, recipients, or donees of any moneys or things of value, but indirectly as agents or officers of labor organizations which were themselves such payees. If the money could not be received by the union without the presence of safeguards, then obviously the union officers could not permit it to be spent except in accordance with those same safeguards. The unrestricted payments were thus to be cut off at the source.

But this scheme and purpose was in no wise affected by the action of the Joint Conference Committee in narrowing the meaning of "representative" or by the holding of the Court of Appeals herein. Since union officers were themselves never directly payees or recipients of welfare or check-off funds, there was no loss to the statutory effectiveness in eliminating them from any coverage that may have existed under the original proposal. And since the true statutory representatives are still covered, the payments sought to be curbed and eliminated at their source have been so curbed. The basic purpose of Section 302 has been upheld; no prohibition on legitimate matters has

been imposed; serious constitutional questions have been eliminated; and the term "representative" has been given a uniform and effective meaning throughout the entire Act.

POINT II

The petition for a writ of certiorari should be denied because of the nature of the questions decided and those left undecided by the Court of Appeals, the broad statutory scope necessarily contended for by petitioner herein, and the effect of the Government's contentions upon both the federal-state relationship and the federal criminal law.

While the Taft-Hartley Act itself, viewed as a thing apart, fully sustains the decision below, an examination of that law as a part of our legal system furnishes further compelling reasons for denial of the writ. So too do the nature of this case, its factual background, the legal contentions raised in the Court of Appeals and the disposition made by that Court of those contentions. We shall now deal briefly with these factors, with the scope of the Government's argument herein and with the consequences of its adoption both to the federal criminal law and to the federal-state relationship in the field of criminal jurisdiction.

A

The inappropriateness of certiorari in the instant case.

At the very outset of the majority opinion in the Court of Appeals, Judge Frank states that the record herein is

barren of any evidence of extortion or the like. As the opinion goes on to note, respondent contended that Section 302, through inclusion of the word "wilfully" in paragraph (d) thereof, required as an element of the crime a corrupt or evil purpose or intent within the doctrine laid down by this Court in the case of *Morissette* v. *United States*, 342 U. S. 246 (1952). Conceding that no evidence of corruption, bribery, extortion, evil purpose or the like exists in the case at bar, the Government has taken the position throughout that Section 302 is purely *malum prohibitum* in nature and the word "wilfully" has no relation to any intent or purpose on the part of a defendant.

Respondent has further contended that even under the Government's interpretation of the words "representative" and "wilfully", the evidence was insufficient to warrant his conviction in that it failed to establish knowledge on his part of the identity of the alleged donor of moneys or the fact that such donor was an employer of longshore labor.

And finally, respondent has contended that Section 302 as construed by the Government is unconstitutional on grounds of vagueness and that it is beyond the power of Congress to enact, there being no requirement of any relationship between a defendant's status as a "representative of employees" in interstate commerce and the receipt by him of money or other thing of value.[7]

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[7] *United States* v. *Connelly*, 129 F. Supp. 786 (D. Minn.) cited in a footnote at p. 10 of the petition involved only a constitutional attack on the statute by way of motion to dismiss and did not deal at all with the question decided by the Court of Appeals herein. The *Connelly* decision, moreover, was predicated largely on the District Court decision in this case which had not yet been reversed.

The Court of Appeals found it unnecessary "to consider either of those contentions, since we rest our decision on another ground" (9a).

After considering the statutory interpretation advanced by the Government, the Court said: "If, however, we accepted that interpretation, we would have to consider defendant's argument noted in point I of this opinion" (footnote 4, 10a). This Court is asked to review and can only review the single issue adjudicated by the Court of Appeals. Were it to reverse on that issue, the case would then have to be remanded for a decision by the Court of Appeals on the other factual, statutory and constitutional issues raised by respondent, particularly as to the meaning of the word "wilfully" in the light of the *Morissette* and similar decisions.

We submit that a record of this type is inappropriate for the grant of a writ of certiorari apart from the merits of the issue sought to be reviewed. This Court should not be asked to render its opinion in a case presenting other factual and legal questions, not passed upon by the Court of Appeals, under circumstances which might well render any opinion by this Court a mere advisory expression of views having no ultimate effect upon the final determination of the cause.

B

The scope of the Government's contention.

As indicated above, it is the Government's contention that Section 302 of the Taft-Hartley Act is a *malum prohibitum* provision making criminal the mere receipt of moneys by a "representative of employees" irrespec-

tive of motive, purpose or intent. It should therefore be recognized that the petition's fine-sounding phrases—"betraying the trust of the employees", "faithless and venal representatives", and the like—are all beside the point. So too are the quoted legislative references to "bribes" and "extortion". If these quotations and references have any meaning, they establish the correctness of respondent's contention that "wilfully", as used in this statute requires evil or corrupt intent, since only when such factors are present can the interest of employees be betrayed. And although, as we have shown above, prohibition of bribery and extortion was not in fact the legislative purpose behind the enactment of Section 302, if this is to be the intent attributed to Congress then the reversal of the conviction must stand on the basis of the insufficiency of evidence, whatever may be the meaning of the word "representative".

The Government's contention, in sum, goes far beyond the confinements of an anti bribery or anti-extortion statute designed to prevent faithless and venal conduct. Under its interpretation Section 302 would apply, for example, to the receipt of a charitable or religious contribution by a "representative of employees" from an employer or the acceptance of a political contribution by such a representative. It would apply to a turkey on Thanksgiving, candy on other festive occasions, or flowers sent to an invalid official at a hospital. Since intent to influence or be influenced in conduct is irrelevant to the Government's claim, the amount or value of the gift is irrelevant as are the circumstances of its making.

Consequences would necessarily follow from the broad scope which petitioner seeks to give the word "representative" and the *malum prohibitum* construction advanced by it, which Congress could not have intended and

did not, as a matter of record, intend. Such consequences have no relation to insuring the faithful performance of duties by union officials or the prohibition of "sellouts" to employers; a statute directed to this end would have been drafted far differently from Section 302.

C

The grave consequences of the Government's statutory contention to the federal criminal law, the federal-state relationship, and the rights of individual citizens.

The Government rightly points out in its petition (p. 22) that this is "a field largely preempted by federal legislation". See *Garner v. Teamsters*, 346 U. S. 485 (1953). And as we have shown above, the Government views Section 302 as a sweeping enactment barring all receipts of money by union officials from employers, irrespective of circumstance, purpose or intent, unless they fall within one of the five exceptions set forth in Section 302(c). This interpretation not only gives rise to grave constitutional questions but presents insuperable state-federal problems in the crucial area of criminal law enforcement.

For if Section 302 of the Taft-Hartley Law is interpreted as applying to union officials, then the states have been ousted completely from their traditional jurisdiction over extortion and bribery on the part of any such official. The Taft-Hartley Law, so interpreted, would be broad enough to cover these traditional state crimes and hence would serve to exclude the states entirely from this field. An intent to accomplish such a drastic result is not lightly to be attributed to Congress.

Nor can this problem be solved by assuming that the federal law does not oust the states of jurisdiction and that the states may act concurrently with the federal Government in prosecuting extortion by and bribery of union officials. Such a holding would only raise another serious problem, that of former jeopardy. Where state and federal governments have each enacted criminal statutes making the same act an offense under the laws of each, conviction or acquittal under state law does not bar a later federal prosecution. *Hebert* v. *Louisiana*, 272 U. S. 312 (1926); *United States* v. *Lanza*, 260 U. S. 377 (1922).

Under such circumstances, a defendant may not only be put in jeopardy twice, but may actually be punished twice, for the same act. But although the federal law does not provide that such double prosecution and punishment constitutes "former jeopardy" in the technical sense, because of the rule that in such a case two offenses have been committed, one under state and one under federal law, this Court has recognized that the mere possibility of such double prosecution is abhorrent to our sense of justice. Accordingly, the presence of that possibility has been used as the basis for the strict construction of federal statutes creating "offenses which duplicate or build upon state law". *Jerome* v. *United States*, 318 U. S. 101, 105 (1943).

The statutory interpretation advanced by petitioner would not only create chaos and confusion in the field of federal-state relations, it would create equally serious problems with respect to the federal penal law itself. For if the statute involved herein covers all receipts of money by a union official from an employer, other than those falling within the specific exceptions in Section 302, a substantial area of overlapping exists between this section

and the Hobbs "Anti Racketeering Act", 18 U. S. C. Section 1951.

Virtually all violations of the Hobbs Act by a union official or anyone else construed to be a "representative of employees" would, under the Government's theory herein, constitute in and of themselves violations of Section 302 of the Taft-Hartley Law. The exact same act would constitute two separate, substantive federal crimes, each punishable by fine and imprisonment. Conviction or acquittal upon the same evidence under either statute would not bar subsequent prosecution and punishment under the other. Section 302 should not be construed so as to give rise to such a monstrous possibility.

CONCLUSION

For the foregoing reasons, the petition for a writ of certiorari should be denied.

Respectfully submitted,

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1955

No. 281

UNITED STATES OF AMERICA,

Petitioner,

v.

JOSEPH P. RYAN,

Respondent.

ON A PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

SUPPLEMENTAL BRIEF FOR RESPONDENT IN OPPOSITION

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Statement

After the printing of our brief in opposition had been completed and on the very day on which we intended to serve and file it, we were served by the Solicitor General with a copy of the opinion of Hon. Edward J. Devitt, of the United States District Court, District of Minnesota, Fourth Division, in the case of *United States* v. *Brennan, et al.*, together with a copy of a covering letter to the Clerk of this Court requesting that copies of Judge Devitt's opinion be submitted to the Court.

Although there is nothing in that opinion which was not fully presented to the Court of Appeals for the Second Circuit in the instant case, there are two points treated by Judge Devitt which, while vigorously urged by the Government below, were either not mentioned or not pressed in the petition herein and hence were not dealt with in our brief. Since Judge Devitt's opinion has now been submitted to this Court, we deem it appropriate to file this supplemental brief dealing solely with those two matters.

POINT I

Section 1 of the National Labor Relations Act (29 U. S. C., Section 151) has no application either to Section 302 of the Taft-Hartley Act or to the issue at bar.

Judge Devitt relied heavily upon a portion of Section 1 of the NLRA, quoted on page 4 of his opinion, as indicative of Congressional intent toward Section 302 and as support for the construction of that section urged by the Government. The paragraph quoted by him, which was added to the National Labor Relations Act in 1947 through the enactment of the Taft-Hartley Law, is irrelevant to the scope of Section 302, and the reliance put upon it is wholly misplaced.

In the first place the findings and policy statement in Section 151 of 29 U. S. C. have no application whatsoever to Section 186 of the Code, which is Section 302 of the Taft-Hartley Law. For Section 151 of the Code is Section 1 of that portion of the Taft-Hartley Law encom-

passed within the National Labor Relations Act. The findings and policy statements in that section refer only to the NLRA which concludes with Section 168 of the Code and have no reference to any other portion of the Taft-Hartley Act. Judge Devitt apparently overlooked the fact that Section 302 is outside the NLRA, although by virtue of Section 501 of the Taft-Hartley Law the meaning of the word "representative" in Section 302 is to be gathered from its meaning in the NLRA.

In brief, therefore, the provisions of Section 151 of the Code are material only insofar as they use the term "representative," and here, as in all other provisions of the statute, the use of that term supports the construction contended for by us, not by petitioner. But Section 151 is wholly immaterial insofar as it generalizes on the matter to be covered in the statute and the objects to be accomplished therein, since the statute thus contemplated is the NLRA alone, not the remainder of the Taft-Hartley Law.

That this section of findings and policies is limited in scope to the NLRA appears further from the fact that the Taft-Hartley Law as a whole does have a general section entitled "Statement of Policy", which covers the entire Act, NLRA and non-NLRA provisions alike. This provision, Section 1 of the Taft-Hartley Law and Section 141 of the Code, consists of two short paragraphs, and is so general in its content as to shed absolutely no light on the meaning of "representative" as used either in Section 302 or in any other part of the Taft-Hartley Law.

Moreover, the quoted paragraph of Section 1 of the NLRA was drawn with specific provisions in mind which do not include Section 302. The reference therein to the elimination of "certain practices by some labor organizations, their officers and members" deals with the various

provisions in Section 8(b) of the amended NLRA (Section 158(b) of the Code) which prohibits "unfair labor practices [by a] . . . labor organization or its agents". The addition of Section 8(b), representing the new concept of union unfair labor practices, was the principal change made in the NLRA in 1947, and the new fourth paragraph in Section 1 of the NLRA (Section 151 of the Code) was intended to explain that addition. It has no relation to any provision of the Taft-Hartley Law outside of the NLRA, and certainly not to Section 302 of the Taft-Hartley Law.

POINT II

The characterization in the report of the Joint Conference Committee of the changes made in Section 302 by that Committee does not support petitioner's argument herein.

Judge Devitt also relied heavily, as did District Judge Palmieri in the instant case, upon the report of the Joint Conference Committee for the Taft-Hartley bill which stated that the Senate amendment was being adopted "with minor clarifying changes."

Although we do not believe that legislative purpose can properly be gleaned from a committee report's characterization of the magnitude or importance of a textual change, as distinct from a statement as to the substance or meaning of the action taken, in this instance we agree that the change made was indeed minor viewed in relation to the general scheme and purpose of Section 302; the fact that these changes are crucial to this particular

case is no evidence to the contrary.[1] As the Court of Appeals said in the instant case (18a, footnote 10a):

> "For, in relation to the general purpose of the Section—the regulation of union welfare funds—the changes are of little import, and only if the Section is applied to other kinds of payments do they assume importance."

To illustrate the error in Judge Devitt's analysis, it is necessary only to turn to paragraph (g) of Section 302. This paragraph was added for the first time by the Joint Conference Committee and substantially enlarges the rights of employee representatives by restricting the applicability of the statute. It too is covered by the phrase in the Committee report "minor clarifying changes", and again this is accurate viewing the section as a whole. Nevertheless, in the case of a trust fund which comes within this paragraph, the addition thereof by the Joint Conference Committee makes the difference between lawful conduct and the commission of a crime; to the parties involved, this "minor" change means that they cannot be imprisoned for acts which would otherwise have left them clearly liable to just that fate. So too with the change in the meaning of "representative" as it affects the case at bar.

---

[1] To hold in effect that the elimination of the separate definition of representative made no substantive change in Section 302 is to ignore not only the comparative language of the bill and the statute, but the express words of Section 302's sponsor. For it should be recalled that Senator Ball in introducing this section announced to the Senate that the meaning of the word "representative" in his proposal was different from that in the NLRA. Under Section 501(3) of the Act, of course, the meanings are the same.

CONCLUSION

For the foregoing reasons and for those set forth in our principal brief in opposition, the petition for a writ of certiorari should be denied.

Respectfully submitted,

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v.

JOSEPH P. RYAN,
Respondent.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

BRIEF FOR RESPONDENT

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against

JOSEPH P. RYAN,

Respondent.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

BRIEF FOR RESPONDENT

Question Presented

Whether respondent, who was not the statutory employee "representative" under the terms of the National Labor Relations Act but merely an officer of the labor organization occupying that status, was a "representative" of employees within the meaning of Section 302 of the Labor Management Relations Act.

Statute Involved

Section 302 of the Labor Management Relations Act
(29 U. S. C. Section 186)

"*Restrictions on payments to employee representatives*

"a) It shall be unlawful for any employer to pay or deliver, or to agree to pay or deliver, any money

or other thing of value to any representative of any of his employees who are employed in an industry affecting commerce.

"(b) It shall be unlawful for any representative of any employees who are employed in an industry affecting commerce to receive or accept, or to agree to receive or accept, from the employer of such employees any money or other thing of value.

"(c) The provisions of this section shall not be applicable (1) with respect to any money or other thing of value payable by an employer to any representative who is an employee or former employee of such employer, as compensation for, or by reason of, his services as an employee of such employer; (2) with respect to the payment or delivery of any money or other thing of value in satisfaction of a judgment of any court or a decision or award of an arbitrator or impartial chairman or in compromise, adjustment, settlement or release of any claim, complaint, grievance or dispute in the absence of fraud or duress; (3) with respect to the sale or purchase of an article or commodity at the prevailing market price in the regular course of business; (4) with respect to money deducted from the wages of employees in payment of membership dues in a labor organization: *Provided,* that the employer has received from each employee, on whose account such deductions are made, a written assignment which shall not be irrevocable for a period of more than one year, or beyond the termination date of the applicable collective agreement, whichever occurs sooner; or (5) with respect to money or other thing of value paid to a trust fund established by such representative, for the sole and exclusive benefit of the employees of such employer, and their families and dependents (or of such employees, families, and dependents jointly with the employees of other employers making similar payments, and their families and dependents): *Provided,* that (A) such payments are held in trust for the purpose of paying, either from principal or income or both, for the benefit of

employees, their families and dependents, for medical or hospital care, pensions on retirement or death of employees, compensation for injuries or illness resulting from occupational activity or insurance to provide any of the foregoing, or unemployment benefits or life insurance, disability and sickness insurance, or accident insurance; (B) the detailed basis on which such payments are to be made is specified in a written agreement with the employer, and employees and employers are equally represented in the administration of such fund, together with such neutral persons as the representatives of the employers and the representatives of the employees may agree upon and in the event the employer and employee groups deadlock on the administration of such fund and there are no neutral persons empowered to break such deadlock, such agreement provides that the two groups shall agree on an impartial umpire to decide such dispute, or in event of their failure to agree within a reasonable length of time, an impartial umpire to decide such dispute shall, on petition of either group, be appointed by the district court of the United States for the district where the trust fund has its principal office, and shall also contain provisions for an annual audit of the trust fund, a statement of the results of which shall be available for inspection by interested persons at the principal office of the trust fund and at such other places as may be designated in such written agreement; and (C) such payments as are intended to be used for the purpose of providing pensions or annuities for employees are made to a separate trust which provides that the funds held therein cannot be used for any purpose other than paying such pensions or annuities.

"d) Any person who willfully violates any of the provisions of this section shall, upon conviction thereof, be guilty of a misdemeanor and be subject to a fine of not more than $10,000 or to imprisonment for not more than one year, or both.

"e) The district courts of the United States and the United States courts of the Territories and pos-

sessions shall have jurisdiction, for cause shown, and subject to the provisions of Section 17 (relating to notice to opposite party) of the Act entitled 'an Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes', approved October 15, 1914, as amended (U. S. C., title 28, sec. 381), to restrain violations of this section, without regard to the provisions of section 6 and 20 of such Act of October 15, 1914, as amended (U. S. C., title 15, sec. 17, and title 29, sec. 52), and the provisions of the Act entitled 'An Act to amend the Judicial Code and to define and limit the jurisdiction of courts sitting in equity, and for other purposes', approved March 23, 1932 (U. S. C., title 29, secs. 101-115).

"f) This section shall not apply to any contract in force on the date of enactment of this act, until the expiration of such contract, or until July 1, 1948, whichever first occurs.

"g) Compliance with the restrictions contained in subsection (c) (5) (B) upon contributions to trust funds, otherwise lawful, shall not be applicable to contributions to such trust funds established by collective agreement prior to January 1, 1946, nor shall subsection (c) (5) (A) be construed as prohibiting contributions to such trust funds if prior to January 1, 1947, such funds contained provisions for pooled vacation benefits."

Section 501 of the Labor Management Relations Act
(29 U. S. C. Section 142)

"(3) The terms 'commerce,' 'labor disputes,' 'employer,' 'employee,' 'labor organization,' 'representative,' 'person,' and 'supervisor' shall have the same meaning as when used in the National Labor Relations Act as amended by this Act."

Statement

Respondent, until his retirement in November, 1953, was president of the International Longshoremen's Association (hereinafter sometimes referred to as the "ILA"), an international labor organization representing longshoremen and related classifications of labor on the waterfront of the Port of New York and in other ports throughout the nation. It has been stipulated that the ILA and its subdivisions were the recognized bargaining agents of longshore employees (R. 23).

As bargaining representative of waterfront workers, the ILA, not respondent, negotiated and entered into collective bargaining agreements with the various employers in the longshore industry, both in that Port and elsewhere.

In all cases the ILA itself, not the respondent, was the party to the collective bargaining agreements on behalf of the employees. No individual was a party to any collective bargaining agreement governing waterfront employment in the Port of New York except such individuals as might have been employers of labor. Under the ILA Constitution (Govt. Ex. 1A and 1B), the function of collective bargaining is vested exclusively in the Union, through its Wage Scale Committee, not in its President, and the bargaining was in fact conducted by the Wage Scale Committee, not respondent (R. 23, 24).

Within the past few years the ILA has won for its members both a welfare plan and a pension plan. Each plan provides for the establishment of a trust fund to be financed solely by employer contributions. Each plan is jointly administered by trustees selected by the ILA and the employers. Each plan is in writing and complies with Section 302 of the Labor Management Relations Act (Def. Ex. A, B, and C).

As in the case of the collective bargaining agreements, the welfare and pension plans have been entered into not by respondent, but by the ILA itself as the representative of the employees covered thereunder. There is no welfare or pension plan covering waterfront employees to which an individual is a party on behalf of the employees. In each case the employees' representative is a labor organization.

By the same token, the trustees, administering these funds, other than those selected by the employers, were appointed by the ILA, not by respondent or any individual, and are called "Union Trustees". In fact; under the terms of the written agreements themselves, this power of appointment belongs to the Union.

As Judge Palmieri pointed out at the conclusion of the trial herein (R. 142), respondent's receipt of money from James C. Kennedy was entirely open and devoid of any elements of surreptitiousness. His name was taken from a Christmas list in the Kennedy office and typed on an envelope by a stenographer working in an open room. The envelope containing the money was given to respondent in his business office by Kennedy who first announced himself to the Union's receptionist and then passed through a public waiting room.

There is thus evidence that the giving of money, from the point of view of the donor, was occasioned by the Christmas season, but there was no testimony as to the purpose of the gift by Kennedy or its receipt by respondent. No evidence exists as to whether the moneys were personal gifts to respondent destined for his own use or contributions to some cause in which he was interested.

In reviewing the evidence, the trial judge stated that "this record is completely barren of any proof or implication that the defendant received any money for a corrupt purpose or for the purpose of influencing a judgment

in any manner" (R. 141). He concluded his analysis as follows: "So far as I can see from this record there is not a single element of proof or a single implication indicating that the defendant was sought to be corrupted or was in fact corrupted, or that the bargaining power of the employees he represented as president of this International Longshoremen's Association was in any way impaired or diminished" (R. 143-144).

Despite this clear record, the Government in its brief seeks to create the contrary impression by repeatedly describing respondent's receipt of money as a "payment," a term connoting a *quid pro quo* from respondent to the giver of the money. This is contrary not only to the evidence in the record but to the express finding of the trial judge. Improper employer influences destroying the "integrity of collective bargaining," to which petitioner refers so often, are no part of the facts of this case.

The trial judge's decision rested on the theory, urged by the Government (R. 145), that the statute was *malum prohibitum*. The Court of Appeals agreed that there was no evidence of corruption, but found it unnecessary to consider whether intent or purpose was an element of the crime. The Court based its reversal of the conviction on the ground that the term "representative of employees" in Section 302 of the LMRA did not refer to a union officer when the Union itself occupied that status, a status made "exclusive" by the provisions of Title II of the LMRA, the National Labor Relations Act.

Summary of Argument

I. The word "representative", as used throughout the Labor Management Relations Act, is defined in Section 501(3) of that Act in terms of its "meaning when used" in the amended NLRA. "Representative" is used with refer-

ence to a "representative of employees" 25 separate times in 16 distinct provisions of the amended NLRA. Each and every time, the term refers not to a union official, but to the labor organization or individual selected by a majority of the employees in an appropriate bargaining unit as their exclusive representative for purposes of collective bargaining. There are no exceptions to this uniform use of the term.

In the case at bar, the exclusive representative of the longshore employees in New York was a labor organization, the International Longshoremen's Association, and not respondent. Consequently under the express definition in Section 501(3) of the LMRA, the provisions of Section 302(b) apply not to respondent but to the ILA.

That the term "representative of employees" should have this meaning in the LMRA is understandable in light of the purposes and structure of the Act. For under this statute, employees, and employees only, are grouped into appropriate bargaining units with the representative chosen by the majority being endowed with federally protected rights and subjected to federally imposed duties and liabilities. The free choice of employee representatives, guaranteed to employees under the LMRA, is applicable solely to the exclusive bargaining representative; and the election procedures established under the Act to insure this free choice extend only to the statutory "representative of employees." These procedures in no wise apply to union officers; and no federal control is provided over the selection of union officers who may or may not be the choice of the employees in any given bargaining unit.

Where Congress, in the LMRA, intended to refer to union officers, it used a clearly applicable term such as "officers" [NLRA Section 9(h)] or "agents" [NLRA Section 8(b), LMRA Section 301(b)]. And where Congress intended both a labor organization and its officers to be

covered by a statutory provision, it used an appropriate, explicit phrase like "a labor organization or its agents" [NLRA Section 8(b)]. The use in Section 302 of the word "representative," with its well-defined meaning in other sections of the same Act, must be deemed meaningful and purposeful.

Section 302 itself confirms the correctness of the construction adopted by the Court of Appeals. Intended as a limitation on the area of permissible collective bargaining, the Section commences with an absolute ban on all transfers of money from employer to employee representative, thereby prohibiting the parties to collective bargaining from agreeing on such transfers. Welfare funds and check-offs were prominent examples in 1947 of the type of transfer Congress intended to regulate; guaranteed annual wage funds are a notable recent example. The ban being absolute, Congress then had to exempt therefrom all transfers deemed by it to be proper, and this was done through the five exceptions in Section 302(c). Since a statutory "representative" could be either a labor organization or an individual, the exceptions had to be applicable to both, so that the employees' selection of representative, which was intended to be free and unlimited under the NLRA, would not be limited by the restrictions in this Section.

The most important exception in Section 302(c) deals with welfare and pension funds "established by such representative." In the case at bar, the welfare and pension funds have been established by the ILA, not by respondent. Such funds are invariably established by the statutory representative in its collective bargaining, and not by any particular union officer.

Section 302 likewise shows that the Congressional purpose was not to eliminate corrupt or surreptitious transactions between employer and union officer, as petitioner claims. For subdivision (f) of that Section permits an

otherwise illegal agreement made prior to the enactment of the statute to be performed for one year thereafter. Such a provision would be unthinkable in a statute designed to stamp out corruption, bribes, and "sell-outs"; its inclusion in Section 302 demonstrates unmistakably that the legislative aim was something else altogether.

If the Government's argument were adopted by this Court, chaos would be introduced into labor relations. Employers, under Section 302 as so construed, would be authorized to establish welfare and pension funds with minority unions, or even individual union officers, and to effectuate check-offs with such minority unions. And if the statutory election procedures governing "representatives of employees" are to be deemed applicable to union officers, then impeachment of union officers and review of union elections through the NLRB would be only two of the astonishing consequences.

II. Legislative history confirms the correctness of the decision below. Virtually the entire Congressional consideration of Section 302 was devoted to welfare funds and their regulation. Congress indicated clear awareness that such funds were created through payments to labor organizations, and not to their officers. No evidence exists that Congress' purpose was to "eradicate improper employer influences" and hence strengthen union bargaining power, as petitioner claims. On the contrary, such a purpose would be inconsistent with the entire policy of Taft-Hartley which was to correct an asserted lack of balance in the original NLRA by limiting the power of unions, imposing new liabilities upon them and removing certain restrictions from employers in their industrial relations.

Throughout its entire history in the Taft-Hartley bill, Section 302 contained a separate definition of "representative," at variance with the meaning of that term in the NLRA. This definition may well have covered union offi-

cers. Key Senators of the majority party protested that the definition was too broad in that it would nullify basic provisions of the NLRA and punish innocent conduct on the part of union officers. Thereafter the Joint Conference Committee eliminated the separate definition of "representative" and added that word to Section 501(3) as one of the statutory terms defined through its NLRA meaning.

As a result of the enactment of Section 302, welfare funds have been regulated and collective bargaining limited in the manner desired by Congress; and this has been accomplished without any attempt to extend the statutory coverage to union officers.

III. The Government's broad and sweeping contention herein would have the further result of ousting the states completely from their traditional jurisdiction over extortion by and bribery of union officials or creating a federal crime duplicating a state crime and enabling both federal and state penalties to be imposed for the same act. In addition, adoption of the Government's contention would permit conviction under two federal acts, the Hobbs Act and the Taft-Hartley Act, for precisely the same conduct.

IV. A statute should be construed, if possible, to avoid serious Constitutional questions. Accordingly, the decision below should be affirmed, for to construe Section 302 as the Government urges would result in its invalidity.

Section 302, as construed by the Government would be void for vagueness in that it would supply no ascertainable standard governing the meaning of "representative"; the average citizen would not be given fair notice as to which persons are subject to the statutory coverage. Particularly is this so when, under the Government construction, the term "representative of employees" in Section 302 would have a different and broader meaning than in all other provisions of the LMRA.

In addition Section 302, as so construed, would be invalid both on its face and as applied in that it would be beyond Congress' power to enact. A receipt of money by a private individual would be prohibited solely because he occupied a certain industrial or economic status, but no link would be required between that status and the act to be made criminal. To prohibit an act which might spring from a private, personal, social, political, fraternal, or religious relationship between two persons, solely because they also may occupy a certain economic relationship, far exceeds Congressional power to regulate interstate commerce.

ARGUMENT

POINT I

Respondent was not a "representative of employees" within the meaning of Section 302 of the Labor Management Relations Act. The sole and exclusive representative of waterfront employees, including those employed by Daniels & Kennedy, Inc. and J. Arthur Kennedy & Son, Inc., was the International Longshoremen's Association, a labor organization, together with its Atlantic Coast District and affiliated locals, also labor organizations.

The word "representative" as used in Section 302 of the LMRA is defined in that statute. Section 501(3) of the LMRA (29 U. S. C. Section 142) defines that term for Section 302 and for all other sections of the Act. It provides as follows:

> "(3) The terms 'commerce,' 'labor disputes,' 'employer,' 'employee,' 'labor organization,' 'representative,' 'person,' and 'supervisor' shall have the same meaning as when used in the National Labor Relations Act as amended by this act."

In this Point we shall show the meaning of "representative" throughout the amended NLRA in accordance with this section of definitions. We shall do this through an analysis of the statutory scheme and structure and an examination of the use of "representative" in each of the provisions of the NLRA in which it is found. We shall do the same with the remainder of the LMRA, and particularly Section 302 itself. An examination of this statute will disclose that the word "representative" as defined and used therein has a clear and consistent meaning throughout the entire Act, and is used in the same way throughout.

As the Court below noted, the term "representative", with reference to a "representative of any employees" "invariably . . . means a 'representative' selected by a majority of the employees, in an appropriate unit, as their exclusive bargaining representative" (R. 173). The word "invariably" is an apt one; there are no exceptions. The status of employee representative is created and recognized by this very statute which endows the possessors of that status with a series of rights, powers, duties, and liabilities. Moreover, it is clear that this is the only meaning possessed by the word "representative" with reference to a "representative of employees" and that such a "representative", within the meaning of the amended NLRA and each use of the term therein, cannot and does not cover a union official. In the case at bar the statutory "representative of employees" is the International Longshoremen's Association, not respondent.

A. The Statutory Scheme of the LMRA Establishes That Respondent Was Not a "Representative" of Employees Within the Meaning of the Act.

The bulk of the LMRA, popularly known as the Taft-Hartley Act, is an amended version of the National Labor Relations Act, the old Wagner Act which was originally adopted in 1935. This amended NLRA comprises sub-

chapter II of the LMRA, Sections 151 through 168 of the Code. The remainder of the LMRA is entirely new matter added at the time of the statute's adoption in 1947. Section 302 is contained in this latter group of largely miscellaneous provisions.

It is necessary to understand the statutory scheme of the entire Labor Management Relations Act in order properly to construe and apply the term "representative," as used in Section 302, because the statutory definition of that term acquires meaning only in the context of the entire Act. It is particularly necessary to ascertain how the term is used in the amended NLRA, although Section 302 is itself in another subchapter of the LMRA, because, as we have shown above, Section 501(3), the general provision on definitions in the LMRA, expressly directs that the meaning of the term is to be found in that portion of the LMRA embraced within the NLRA. Section 501, like Section 302, is not a part of the NLRA and the definitions contained therein govern the use of the various terms defined wherever they appear anywhere in the LMRA, including Section 302.

Obeying the statutory command in Section 501 and turning to the amended NLRA for the meaning of the word "representative," we find that Section 2 of the NLRA entitled "Definitions," provides that when used in that Act:

> "(4) The term 'representatives' includes any individual or labor organization."

The oft-repeated argument in the Government's brief that this provision brings union officers within the statutory meaning of "representative" is wholly without merit. Obviously not all individuals or labor organizations in this nation are "representatives", and the NLRA definition, by using the verb "includes", does not purport to embrace

all such persons or bodies within its scope. Nor does Section 501 of the Taft-Hartley Act refer to Section 2 of the NLRA or to any NLRA "definition" of the key term, as could easily have been done, but rather to the "meaning when used" in the amended NLRA. In the words of the opinion below, "We thereby learn [from Section 2(4)] what 'representative' *includes*. To understand what it *means* . . . we must . . . turn to the many sections of the amended NLRA where 'representative' is so used." (Emphasis supplied) (R. 173).

An examination of the substantive provisions of the NLRA makes clear that the "individual" referred to in Section 2(4) as a possible "representative" is not a union official but an individual acting as representative of the employees in a unit in lieu of a labor organization. Thus Section 8(d) of the NLRA provides:

> "The duties imposed upon employers, employees, and labor organizations by paragraphs (2), (3) and (4) of this subsection shall become inapplicable upon an intervening certification of the Board, under which the *labor organization or individual*, which is a party to the contract, has been superseded as or ceased to be the *representative* of the employees . . ." (Emphasis supplied.)

And Section 9(c)(1) provides:

> "Whenever a petition shall have been filed in accordance with such regulations as may be prescribed by the Board—
>
> (A) by an employee or group of employees or any individual or labor organization acting in their behalf alleging that a substantial number of employees (i) wish to be represented for collective bargaining and that their employer declines to recognize their *representative* as the *representative* defined in subsection (a) of this section, or (ii) assert that the *individual or labor*

> *organization*, which has been certified or is being currently recognized by their employer as the bargaining *representative*, is no longer a *representative* as defined in subsection (a) of this section; or
>
> (B) by an employer, alleging that one or more *individuals or labor organizations* have presented to him a claim to be recognized as the *representative* defined in subsection (a) of this section; . . ." (Emphasis supplied.)

The plain language of these sections shows that the "individual or labor organization" described as a "representative" or former "representative" is the collective bargaining agent alone and not any of its officers. And the use of precisely the same phrase, "individual or labor organization", in Section 2(4) means that the same concept was intended to be conveyed by the identical words in that section.

Not only does Section 2(4) of the NLRA refute the Government's contention, but Section 501(3) of the LMRA pointedly fails to refer to that section and speaks instead of the "meaning . . . when used" in the amended NLRA. To ascertain that meaning, it is necessary to examine the entire NLRA.

At the outset of the NLRA in Section 1 (Section 151 of the Code), Congress expounds the basic policy that the free flow of commerce is burdened and obstructed by the denial to employees of the right to organize and bargain collectively. To permit the process of collective bargaining to function in an atmosphere of relative equality between employers and employees and without impairment through improper practices by either employers or labor organizations, the elimination of such practices is declared to be essential.

Throughout the Act, as in the initial statement of "Findings and Policies" it is emphasized that commerce flows freely and unobstructed when employees are encouraged and enabled to organize, designate representatives of their own choosing, and bargain collectively through those representatives.

For the purpose of selecting representatives, the Act conceives of employees as being grouped into "appropriate units". These units may be composed of all employees of a given employer, all employees in a particular plant, or merely all those in a particular craft or subdivision of a plant (NLRA Section 9). Thus, in a particular plant there may be only one unit and hence a single representative for all employees, or several appropriate units, each with its own representative. Similarly the business of a single employer may call for one bargaining unit or several, depending upon its nature and the industrial facts. In some instances, as in the case at bar, the "employer unit" actually covers a group of employers, all of whom may hire a pool of employees interchangeably.

Under the Act, there can be only one representative of the employees in a particular unit, that representative being the exclusive bargaining representative of the entire unit (NLRA Section 9(a)). This representative is chosen by the majority of the employees in the unit. In other words, the Act does not permit minority groups in a unit to bargain collectively through a "representative" chosen by them. The sole and exclusive representative, within the meaning of the Act, is the one selected by the majority. The employer must bargain collectively with the representative of the majority alone, and the collective agreement between such representative and the employer governs the terms and conditions of employment of all workers in the unit, those who have chosen the representative and those who would have preferred another. *American Communications Association* v. *Douds*, 339 U. S. 382, 400 (1950).

The commencement of the collective bargaining relationship between an employer and the representative of his employees in a particular appropriate unit may occur in two different ways. The representative may simply make a demand for recognition as such upon the employer, and the employer, being satisfied that the party making the demand is in fact the chosen representative of a majority of the unit, may voluntarily accord recognition, commence bargaining, and enter into a collective agreement. In that case, the matter of ascertaining the representative of the employees and establishing the collective bargaining relationship is accomplished independently of the representation procedures set up in the Labor Management Relations Act.

On the other hand, when an employer is faced with a demand for recognition and to commence bargaining, he may not be convinced that the party making it is in fact the representative of the majority in the unit. Or he may feel that the unit described in the demand is inappropriate. And in some instances he may be faced with demands from two or more sources, each claiming to be the representative chosen by a majority of the unit.

To resolve the question of representation, procedures are established in the Labor Management Relations Act, specifically in Section 9 of the NLRA. There it is provided that employers, employees, or employee representatives may file petitions with the National Labor Relations Board. The Board then holds hearings to determine the appropriate unit. If it in fact appears that a question of representation exists, then the Board conducts a secret election among the employees in the unit found to be appropriate. In that election the employees are given the opportunity to choose among the contenders for the position of representative or to reject all of them. If one of the contenders is chosen, then that party is certified by the National Labor Relations Board as the representative of the employees,

and the employer is obligated to bargain collectively with such representative.

Provision is also made for decertification elections upon a petition alleging that a party which has been certified or is currently recognized as the representative is no longer the representative desired by the majority (Section 9(c)(1)).

The evidence in the case at bar establishes that the ILA until 1953, and during the period in question, was the recognized and unchallenged representative of the longshore employees in the Port of New York (R. 117-118). The only challenge during this period, which related solely to tractor drivers, was disposed of in a National Labor Relations Board proceeding, the outcome of which left the ILA as the recognized representative (R. 119-122). Since no NLRB election was required until 1953, and since the employers for decades have recognized the ILA as the representative of their longshore employees, no NLRB certification was necessary.

It is not our contention that only a representative certified as such by the NLRB is covered by Section 302. The NLRA clearly contemplates that representatives may acquire that status through selection by the employees in an appropriate bargaining unit and voluntary recognition as such by the employer. Definite rights and liabilities are given to such representatives. Many labor organizations, including the ILA prior to 1953, were never certified but have always acted as the designated and recognized representative of employees. As such they have the status of representatives under the NLRA and are subject to the restrictions of Section 302 of the LMRA.

We do contend that the stipulation of facts herein, in setting forth that the "ILA, the Atlantic Coast District of the ILA, and the ILA's affiliated local unions were the recognized bargaining agents for longshore labor in the

Port of New York in 1950 and 1951" and entered into collective bargaining contracts with longshore employers (R. 23) has established that the ILA and its subdivisions were the representatives of longshore labor within the meaning of the NLRA, the term "bargaining agent" being simply a non-statutory term employed synonymously with the statutory term "representative"; and by reason of Section 501, the stipulated facts likewise establish that these labor organizations were the sole and exclusive representatives of employees within the meaning of Section 302.

Aside from the provisions dealing with the selection of employee representatives, the other principal provisions of the National Labor Relations Act are designed to protect the right of employees freely to organize and engage in concerted activities for their mutual aid or protection or to refrain from such activities (Section 7) and to prohibit certain unfair labor practices by employers and labor organizations (Section 8). These unfair labor practices are what Congress referred to in the "Findings and Policies" (NLRA Section 1) as being impediments and burdens to the flow of commerce, and their prohibition is intended to encourage and further the process of free collective bargaining. In addition Section 8 also contains a provision, paragraph (d), which imposes affirmative duties on the employer and the representative of employees in their collective bargaining.

The remainder of the Labor Management Relations Act, apart from the NLRA, deals generally with machinery established for conciliation of labor disputes, with procedures enabling temporary injunctions to be granted in national emergency strikes, and with certain miscellaneous provisions. The latter deal with the suitability of labor organizations, secondary boycotts, restrictions on political contributions, strikes by government employees, and, in

Section 302, restrictions on payments to employee representatives. Under this latter provision the instant indictment is laid.

As we have seen, the NLRA defines the word "representative" as including both labor organizations and individuals. It is undoubtedly because of the fact that a representative of employees, under the Act, *can* be an individual that the misconception has arisen leading to this prosecution of an officer of a labor organization. But the statute itself makes it perfectly clear that where a union is the representative of employees, no individual, including an officer or agent of the Union, is an employee representative, within the meaning of the Act. The Union itself is the representative; its officers and agents are in fact specifically referred to in the statute in terms which preclude any confusion between their identity and status and that of the representative itself.

A "representative of employees" thus may be either a labor organization or an individual. These two possibilities are alternatives, however, and do not both exist in the same unit of employees.

In practice the majority of employee units in which representatives have been selected are represented by labor organizations rather than individuals. It is, however, entirely permissible for a unit of employees to select an individual or even a group of individuals as their representative, and this does occur. In such an instance the individual selected would have all the statutory rights and duties of a representative, would negotiate and enter into collective bargaining agreements in his own name, and as an individual would be subject to both certification and decertification proceedings. As was testified to by the clerk of the NLRB in this case, an individual may be elected by the employees in a unit and is then certified as the representa-

tive by the NLRB on its official certification forms (R. 131-140).

Bringing the matter closer to home, choice of an individual as representative would mean that the welfare and pension funds referred to in Section 302 would be entered into by the individual in his own name as the employee representative, and any arbitration or court proceedings, also referred to in that section, would be conducted by him in his own name.

It cannot be disputed that the longshoremen in the Port of New York have not adopted this expedient of selecting an individual as their representative. They, like the majority of organized employees in this country, have chosen to be represented by a labor organization, in their case, the International Longshoremen's Association.

Thus collective bargaining agreements are negotiated and entered into by the employers and the Union, not any individual; grievance and arbitration proceedings are between the employers and the Union, not any individual, and finally, the welfare and pension funds for longshoremen which are described in Section 302(c) as being "established by such representative" have been established by the employer and the Union, not any individual.

An examination of each of the uses of the word "representative" in the LMRA shows that it is impossible to construe that term, as used in Section 302, so as to include officers of a labor organization, when the facts show, as here, that it is the Union itself which is the representative for all purposes, that all the incidents and steps in the collective bargaining process are taken by and in the name of the Union, and that the officers merely act as agents for the Union just as do officers and agents of any corporation or unincorporated association. Particularly in those provisions actually dealing with the selection of representa-

tives and representation proceedings, the special status accorded a "representative" under the Act and the restricted applicability of that term to the labor organization or, alternatively, the individual selected as such, and not to any union officer or agent, is made crystal clear.

B. The Word "Representative" as Used in the LMRA, Is a Statutory Term Referring to the Party Designated by the Employees in an Appropriate Unit as Their Bargaining Representative. The Uses of That Term Throughout the LMRA Establish That It Cannot be Constructed So as to Apply to Respondent Herein.

The "meaning [of 'representative'] as when used in the National Labor Relations Act as amended" appears from the many NLRA provisions in which the term is used. Since Section 501(3) makes that meaning applicable to Section 302, the key to this case is found in those NLRA provisions. Accordingly we shall now consider in turn each provision of the amended NLRA in which the term "representative" is used, in either its singular or plural form. As we shall show, each of the 25 times and in each of the 16 separate provisions that "representative" is used with reference to a "representative of employees," it has the meaning given it in the decision below.

The statutory text itself is set forth in the Addendum attached to this brief, each pertinent provision being numbered in the order in which it appears in the statute. In treating these sections below, we shall identify the discussion of each provision by preceding it with the number given that section in the Addendum hereto.

1.

NLRA Section 1; 29 U. S. C. Section 151.—The first use of the term "representative" is in Section 1 of the NLRA, Section 151 of the Code, where Congress enunciates the

national policy of protecting workers in the free designation of representatives of their own choosing for the purpose of negotiating labor agreements or other mutual aid or protection.

It is to be noted in this connection that the NLRA contains specific provisions to effectuate its aim of insuring the free choice of representatives by employees (Section 9). Procedures are established for the holding of representation elections conducted by the NLRB, a governmental agency created by the Act to assure to the employees in a given unit a full opportunity freely to select the representative they desire. In sharp contrast to this there is nothing in the NLRA or any other portion of the LMRA bearing upon the election of union officers and giving to members of a labor organization any free choice in the selection of the officers or agents of their union. If a labor organization denies to its members any opportunity to choose or elect the union officers the members are wholly remediless, insofar as the LMRA is concerned. Their only redress, within the framework of the Act, is to seek to decertify the labor organization with which they are dissatisfied and replace it with another representative.

In other words, the Act guarantees to employees the free choice of their statutory "representative" and provides means to effectuate this choice through NLRB representation elections. However, there is nothing in the Act guaranteeing to any workers a free choice in the selection of the officers of their union and no means are provided to insure such a choice. Thus, at the outset, we have a clear indication that when Congress used the word "representative", it was not thinking of a union officer but rather of the union itself, and its reference to an "individual" in the definition of "representative" applies only to those individuals who serve as alternatives to labor organizations, functioning as representative in their individual capacity

and name, not as agents, and subject to the free choice of all employees in the unit through the representation proceedings described in the Act.

2.

NLRA Section 2; 29 U. S. C. Section 152.—The second use of the term "representative" is in Section 2 of the NLRA where it is defined. As indicated above this definition, taken in itself, is meaningless since obviously not all individuals or labor organizations in the nation were intended to be covered by the term. The true meaning of the term can be determined only in the context of the remainder of the Act. As shown above, the context in which these same words are used throughout the Act confirms the correctness of the construction adopted herein by the Court of Appeals.

3.

NLRA Section 7; 29 U. S. C. Section 157.—In Section 7 of the NLRA, employees are guaranteed the right "to bargain collectively through representatives of their own choosing." Here again, in the great majority of industries where a labor organization serves as collective bargaining agent for the employees, the reference is to the organization itself and not to any of its officers. Taking the case at bar as an example, it is the ILA, and not its officers, with whom the employers bargain collectively. The officers are merely the agents of the Union. These relationships can be seen from two simple facts.

In the first place, the collective bargaining agreements are made, on behalf of the employees, not by any individual but by the International Longshoremen's Association, a labor organization (R. 23). In the second place, the composition of the Wage Scale Conference Committee of the ILA varies from year to year, its members being selected in the main by the various locals in the ILA's Atlantic

Coast District (R. 23-24), but this in no wise affects the bargaining relationships or the collective agreements entered into. The principal always remained the same although it may have acted through different agents. No individual's presence was essential, since each was merely an agent of the bargaining representative and in no sense the representative itself.

Graphic illustration of this appears from the well-known fact that respondent resigned as president of the ILA in November, 1953 without in the slightest affecting the status of the Union or its collective bargaining relationship with the employers. No one would ever suggest that by virtue of the respondent's resignation as president, the ILA ceased to be representative of waterfront workers or that a representation election or certification from the NLRB would be necessary to establish the employees' representative upon such resignation. And yet such would be the case if respondent, rather than the labor organization of which he was an official, had been the representative of the longshoremen.

4.

NLRA Section 8(a)(3); 29 U. S. C. Section 158(a)(3).— Section 8(a)(3) of the NLRA provides one of the clearest demonstrations of the fallacy of the Government's theory in this case. In that section, which prohbits various forms of contractual union security provisions but permits, in the form of a proviso, a union shop clause, the applicability of the proviso is specifically limited to instances where "such labor organization is the representative of the employees". It is hard to conceive of language establishing more forcefully that the term "representative" refers to the organization itself and not to its officers. Moreover, as if to emphasize the point, the word "representative" has been preceded by the article "the", thereby precluding any possible contention that in a unit where a labor organization is representative, there could be another representa-

tive as well. Any such construction would not only run afoul of the phrase "the representative", but would be wholly irreconcilable with the basic theory of the Act that the organization or individual chosen by the employees shall act as the exclusive representative.

That the ILA was recognized in the longshore industry as the exclusive representative of longshore employees within the meaning of the NLRA is further demonstrated by the collective bargaining agreements in evidence herein (Govt. Exs. 1C and 1D). Each of them grants to the ILA the type of union shop clause that is permitted by Section 8(a)(3) to be granted only to a representative of employees and each conditions the grant upon a certification from the NLRB, as was required under the NLRA at the time of the making of the two contracts.

5.

NLRA Section 8(a)(5); 29 U. S. C. Section 158(a)(5).—Subparagraph (5) of Section 8(a) makes it "an unfair labor practice for an employer to refuse to bargain collectively with the representatives of his employees". Here again we wish to point out that it is the ILA and its subdivisions with which the employers bargain collectively and make written contracts, not any individual. The composition of the ILA's bargaining committee is in fact of no concern to the employers. For, as we have shown, the resignation of respondent as president of the ILA, or for that matter the resignation of any other officer or agent of the ILA or his failure to be selected on a Wage Scale Committee, would in no sense affect the obligation of the employers under Section 8(a)(5) of the Act to bargain with the ILA through whatever agents it may act.

6.

NLRA Section 8(b); 29 U. S. C. Section 158(b).—Paragraph (b) of Section 8 is of particular significance in determining the meaning of the term "representative" because,

in addition to using the word itself several times, it refers also to labor organizations and the agents of such organizations. The use of these various terms shows that when Congress intended to refer to the agents of a labor organization it knew how to do so in specific terms. And the context in which those various terms are used shows clearly that the term "representative" refers to the labor organization itself and not to its agents.

Thus, Section 8(b)(3) provides that:

> "it shall be an unfair labor practice for a *labor organization* or its agents . . . to refuse to bargain collectively with an employer provided *it* is the *representative* of his employees." (Emphasis supplied.)

In this sentence the italicized word "it" quite clearly refers back to the term "labor organization", and being singular in form cannot by any stretch of the imagination include both a labor organization and its agents. In other words, the statute makes it an unfair labor practice for a labor organization or its agents to refuse to bargain collectively provided the labor organization is the representative of the employees. By using the words "its agents", a term which clearly describes respondent in the case at bar, in the same sentence as the terms "representative" and "labor organization", and by using the term "representative" in that sentence to refer solely to a labor organization and not to its agents, the Act evidences a clear intent to include within the meaning of the term "representative" only the organization itself and not its agents.

7, 8, 9.

NLRA Section 8(b)(4); 29 U. S. C. Section 158(b)(4).— The same clear intent that appears from Section 8(b)(3) is shown in subdivision (4)(B) of Section 8(b). This section, which is essentially a prohibition against secondary boycotts, prohibits such boycotts where an object thereof is to

force an "employer to recognize or bargain with a labor organization as the representative of his employees unless such labor organization has been certified as the representative of such employees".

Again the Act refers to "the representative" of employees as being a labor organization and again we have the plainest expression of an intent to apply that term to the organization itself and to the organization exclusively. The fact that this paragraph is a part of Section 8(b) and is therefore preceded by the general reference to "a labor organization or its agents" is further indication that the term representative, having been made specifically and expressly applicable to a labor organization, does not apply to the agents of that organization.

The same is true with respect to Section 8(b)(4)(C) which also refers in two places to a labor organization as being "the representative" of employees.

Section 8(b)(4)(D) forbids a secondary boycott with the aim of forcing an employer to assign work to employees of a particular labor organization unless the employer is failing to conform to a certification of the Board determining the bargaining representative for employees performing such work. The significance of this use of the word "representative", in relation to the issue involved in this case, emerges from an examination of Section 9 of the NLRA which deals with National Labor Relations Board certifications and which will be considered below.

10.

NLRA Section 8(b)(4); 29 U. S. C. Section 158(b)(4).— The proviso to Section 8(b)(4) protects employees in their failure to enter upon the premises of an employer, if the employees of that employer are engaged in a strike approved by a representative of such employees whom the employer is required to recognize under the amended NLRA.

In other words, if a labor organization is the representative of employees in a unit and approves or ratifies a strike, then other persons are protected in failing to enter the premises of the struck employer.

The fallacy underlying the instant indictment is again revealed in this subsection. For it is clear that the proviso summarized above could have effects wholly beyond the intent or desire of Congress if approval or ratification by any officer or agent of the labor organization were sufficient to bring the strike within the coverage of the proviso. It is apparent that what is intended is a strike officially approved by the labor organization itself, as the representative of the employees, and not merely one of its officers.

11.

NLRA Section 8(d); 29 U. S. C. Section 158(d).—Section 8(d) deals with the duty to bargain collectively. This duty is defined as "the performance of the mutual obligation of the employer and the representative of the employees to meet" and confer concerning various terms and conditions of employment or the negotiation of an agreement and the execution of a written contract incorporating any agreement reached. It is thus apparent that here, too, in accordance with the scheme and structure of the Act, the parties to the collective agreement are viewed as the employer and the representative of the employees. These are the ones who are required by Section 8(d) to execute a written contract incorporating the collective bargaining agreement reached between them.

In the case at bar the written contracts which have been executed between the employer and the representative of the employees have been entered into on behalf of the employees by the International Longshoremen's Association and its subdivisions, not by any individual (R. 23). In such circumstances, no construction of the statute which

would attempt to make the word "representative" apply to an officer or agent of the labor organization is tenable.

Indeed a license to union officials and employers to make their own private agreements on terms and conditions of employment would destroy the integrity of collective bargaining more quickly and effectively than virtually anything else. Particularly would this be so if such an agreement could be made with an International President of a union, a stranger to a local bargaining unit, thus by-passing completely the duly selected employee representative.

12.

NLRA Section 8(d); 29 U. S. C. Section 158(d).—Section 8(d) is particularly helpful in demonstrating the meaning and application of the term "representative" in instances where it covers an individual rather than a labor organization. The structure of the section shows that when an individual is a representative, he is acting as an alternative to a labor organization, and in such event the individual has the same special status and group of rights and duties as has a labor organization in the more common situation.

Specifically Section 8(d) provides that the duties of collective bargaining devolving upon employers, employees and labor organizations upon the termination of a collective bargaining agreement shall become inapplicable upon a certification by the Board "under which the labor organization or individual, which is a party to the contract, has been superseded as or ceased to be the representative of the employees". Thus the individual contemplated by the Act as a possible representative of employees is one who enjoys the full status of collective bargaining agent in his individual capacity and who, as an individual, is actually a party to the collective bargaining agreement. Plainly such a contemplated state of facts is wholly alien to the

circumstances in the case at bar where no individual has ever been a party to a collective bargaining agreement on behalf of longshoremen or other waterfront workers but where, on the contrary, such collective bargaining agreements have always been made with a labor organization as the party representing the employees.

13.

NLRA Section 9(a); 29 U. S. C. Section 159(a).—Section 9 of the Act deals specifically with the question of representatives and representation proceedings. At the outset in paragraph (a) of that section the legislature enunciates the principle that the representative selected by the majority of the employees of the unit shall be the exclusive bargaining representative of the entire unit. Here, too, it is pertinent to note that in the case at bar collective bargaining is carried on by the ILA, not by any individual, and the collective bargaining agreements are entered into by the ILA and its subdivisions as employee representatives, and not by any individual officer or agent of the ILA. The concept of exclusivity of representation, basic to the entire scheme of the statute, precludes any possibility of respondent holding the same status.

Section 9(a) also contains a proviso permitting an individual employee to present grievances to his employer without the intervention of the bargaining representative provided that the bargaining representative has been given an opportunity to be present at such adjustment. Here, too, the scheme of the Act which contemplates a single collective bargaining representative acting on behalf of all employees in the unit, is made plain, as is the irreconcilable inconsistency between such scheme and any attempt to attach the status of representative to an officer of the ILA under the facts of this case.

14.

NLRA Section 9(b); 29 U. S. C. Section 159(b).—Section 9(b) provides that no labor organization shall be certified as the representative of employees in a bargaining unit of guards if it admits or is connected with an organization admitting to membership employees other than guards. Here is yet another provision containing specific language to the effect that a labor organization is itself the representative of employees within the meaning of the Act, rather than any officers or agents of that organization.

15.

NLRA Section 9(c)(1); 29 U. S. C. Section 159(c)(1).—Section 9(c)(1) provides the mechanics for initiating representation proceedings. As indicated above, it also serves further to clarify and amplify the statutory definition of representative, Section 2(4), and to make plain that when an individual is a representative, it is not because he is an officer of a labor organization but rather because he has been chosen as an alternative to a labor organization. As an individual, therefore, and in his own name he actually carries on collective bargaining and enters into collective bargaining agreements.

The pertinent portion of Section 9(c)(1) provides that a petition may be filed when an employer refuses to recognize the representative of the employees in a unit as the exclusive representative defined in Section 9(a), or when it is asserted:

> "that the individual or labor organization, which has been certified or is being currently recognized by their employer as the bargaining representative, is no longer a representative as defined in subsection (a) of this section."

This section too would cause chaos in the national labor picture if the Government's view of the statute were

adopted and a union officer held to be a "representative". For under that interpretation a "group of employees" dissatisfied with their union officers or desirous of seeing them replaced by other candidates could, at any time during the term of office, petition the NLRB to have the incumbents removed from office and replaced by their rivals. A Board election would be a statutorily guaranteed method of impeaching union officers and changing their terms from those prescribed in the union Constitution to what would in effect be a term at the will of the majority of employees in the unit. Such a state of affairs is on its face absurd, yet it would be the result of petitioner's theory herein.

This illustrates another basic misconception underlying the Government's argument. Under the Taft-Hartley Act all employees in a particular unit have a guaranteed right to participate in the choice of representatives, and the party chosen as representative by the majority is accorded that status under the Act. The election of union officers, however, is confined to m abers of the Union and it is entirely common for union membership to be far less than co-extensive with membership in a given appropriate bargaining unit. In fact the union members in a unit may comprise only a small proportion of the entire group. A mere 51% of the employees in the unit, moreover, would give the union membership control over the determination of the bargaining representative even though all the non-union members participated in a representation election and voted against the union. And again assuming a maximum of opposition, a union officer may be elected by only 51% of the union membership or 26% of the employees in a unit.

And even this does not give the full picture of the difference between union elections for officers and NLRB elections for the representative of employees, since it assumes that the union election is held only among members in a single bargaining unit. This is seldom the case as union

elections invarably are held among members from many bargaining units.

For example, under the ILA Constitution in evidence herein, the respondent was elected International President by a Convention composed of delegates from all locals and geographical districts in which the ILA operated (Govt. Exs. 1A and 1B). The New York membership comprises only a portion of the many thousands of ILA members in the various ports in the United States, Canada, and the territories. It would have been entirely possible for the New York longshoremen, who form a single appropriate bargaining unit within the meaning of the LMRA, to have voted against respondent to a man in the union election and yet to have seen him elected by delegates from the other Ports. Such unanimous disapproval from the employees in one unit would have had no effect on respondent's ability to acquire or retain his union presidency. And, of course, in many unions, key officers are not elected at all, but are appointed to their positions.

Thus, it is clear from the logic as well as the plain language of the statute that employees are protected only in their choice of representative, that is the labor organization or individual accorded the special status defined in the Act. If the New York longshoremen had tired of the ILA, they could have selected another representative, and NLRB machinery would have been available to effectuate such choice. No protection or guaranty, however, is given to employees with respect to the election of union officers, should they choose a labor organization as their representative and it is entirely possible that such officers are desired by only a small number of employees in a given unit, or even none at all, with no opportunity for redress under the Act.

The second paragraph of Section 9(c)(1) permits an employer to file a representation petition when "one or more individuals or labor organizations have presented to

him a claim to be recognized as the representative defined in subsection (a) of this section". Again it is clear that when an individual is or claims to be a statutory representative, his status is equivalent to that of a labor organization and his individual name appears on the National Labor Relations Board ballot when a representation election is held.

In the case at bar, on the contrary, every NLRB representation proceeding involving New York longshoremen has had one or more labor organizations as the sole party or parties claiming to be the representative of the employees, and in no case has an individual claimed to occupy that status. The ILA being the collective bargaining agent and party to the contracts, and respondent being merely one of several union officers elected as such by persons who do not fall into any appropriate bargaining unit, it is plain that he does not fit the category of representative envisaged by the Act. And the exclusive quality of the representative status enjoyed by the ILA rules out any possibility of respondent too being held to possess that status.

16.

NLRA Section 9(g); 29 U. S. C. Section 159(g).—Section 9(g) deals with certain financial reports which labor organizations must file if they seek certification as the representative of employees or in any other respect to avail themselves of the benefits of the Act. This section, like many others in the statute, refers specifically to a labor organization as the representative of employees, providing in part that "no labor organization shall be eligible for certification under this section as the representative of any employees" unless certain conditions are met.

It is also noteworthy that Section 9(g) speaks of the "representative of *any* employees," thereby demonstrating that there is no statutory magic in the word "any", as the Government seems to contend in its consideration of

Section 302, and that the use of this word does not change the meaning of the noun it precedes or expand the meaning of that noun beyond what it was before.

The above summary covers all the uses of the term "representative of employees" in the amended National Labor Relations Act. Two provisions contain the word "representative" in an entirely different context not referring to a "representative of employees" at all. 29 U. S. C. Sections 152(1) ("legal representatives") and 158(b)(1) ("representatives [of an employer] for the purposes of collective bargaining"). But in each and every one of the 16 provisions of the amended NLRA in which a reference is made to a representative of employees—the only type of representative covered by Section 302 of the LMRA and specified in the indictment—what is clearly meant is the party occupying the status created and recognized by the NLRA, that of exclusive representative of a unit of employees, selected as such by the majority of employees therein. There are no exceptions; the term is used in no other way. And by reason of Section 501(3) of the Act, no other meaning can be ascribed to the same term as used in the same way in Section 302.

The use of "representative" in the remaining provisions of the LMRA is entirely consistent with its NLRA meaning. In some provisions there is merely a repetition of the NLRA language with the imposition of different penalties. LMRA Section 303(a), 29 U. S. C. Section 187(a). In other sections repeated references are made, as in the NLRA, to collective bargaining between "employers and the representatives of their employees". LMRA Section 201, 29 U. S. C. Section 171; LMRA Section 204(a), 29 U. S. C. Section 174(a). Throughout the entire Act, therefore, the use of the term "representative of employees" establishes beyond any doubt that it was never intended to apply to a person situated as respondent herein.

C. Answering Petitioner's Contentions as to the Meaning of "Representative"—Petitioner's Admissions and Concessions in Effect Establish the Correctness of the Decision Below.

1. The Government in effect concedes that each and every time the word "representative" is used in the amended NLRA with reference to a "representative of employees", it has the meaning contended for by us.[1] The force of this concession is sought to be softened by use of the word "frequently" (Pet. brief, pp. 12, 26), where "invariably" or "always" would have been the accurate expression. But the plain fact is that no claim is made in the Government brief that there is a single use of the term "representative of employees" in the NLRA which would cover union officers, and the Government fails to point to even one such instance. This alone, in view of the unequivocal language of Section 501(3), is decisive of the issue at bar.

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[1] Although the Government quotes freely from the dissenting opinion below as to the desirability of prohibiting a union officer from receiving money from an employer, it is conspicuously silent on the reasoning by which the dissenting judge concludes that this particular statute achieves that result. The principal ground of the dissent below—never raised by the Government in either the trial court or the Court of Appeals and not urged by it herein—is that the definition of "labor organization" in the NLRA is sufficiently broad to include an individual. While we believe this view to be answered completely by the majority below (R. 174-175), we fail to see its relevance even if its correctness be assumed *arguendo*. For the key term to be construed is "representative" not "labor organization," and it does not advance the argument to claim that an individual may be a "representative" by being a labor organization. He may be a "representative" directly, without involved reasoning, by the simple, clear provisions of Section 2(4) of the NLRA and the substantive provisions of that Act. The question is whether this language refers to a union officer or to an individual acting as "representative" in lieu of a labor organization, and on this score the dissent furnishes no support to petitioner. We think it clear from a reading of the statute that the latter is the correct construction.

2. Petitioner argues, however, that this conceded fact is not due to the meaning of the key term but because it is always modified by "limiting" phrases such as "for the purpose of collective bargaining" or "as provided in section 9(a)". Although we fail to see the relevance of this contention, the short answer to it was given by the Court of Appeals: "That is not true" (R. 174); and the opinion goes on to cite several sections in which the word is not so modified and yet unquestionably refers only to the statutorily created exclusive bargaining representative. See NLRA Sections 1, 7, 8(b)(4)(B), 8(b)(4)(C), 8(d), 9(b), and 9(g).[2]

In its brief before this Court, petitioner apparently recognizes that its reliance on alleged "modifying phrases" is not supported by the statute, and so the claim is made that in some instances at least, the term "representative" of employees means what the Court below held it to mean, not because of modifying phrases, but because of "the context in which it is used" (Pet. brief, p. 25). At this point, we submit, petitioner has conceded our case.

For is not the "context in which it is used" in various NLRA provisions simply another way of saying "[its] meaning as when used in the National Labor Relations Act"? The latter phraseology, of course, is the language

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[2] In several instances the phrases relating to "representative" in the amended NLRA were intended as phrases of limitation, but not at all in the sense urged by petitioner herein. Under the scheme of the NLRA a "representative of employees" may become such in two ways: through voluntary recognition or through certification by the NLRB. As this Court pointed out in *American Communications Association* v. *Douds*, 339 U. S. 382 (1950), several provisions of the NLRA distinguish between certified and recognized representative in the rights conferred and liabilities imposed. Some of the phrases relied upon by petitioner were intended to make the provision in question applicable only to certified representatives. Section 302 is applicable to both certified and recognized representatives.

of Section 501(3) of the LMRA. And once it is admitted, as petitioner has done, that because of its "context" in the NLRA, "representative" means what we contend, then it has been established that this is its "meaning as when used" in the NLRA and hence the meaning which must be given to it in Section 302.

3. Petitioner relies heavily on uses of the word "representative" outside of the NLRA and in a context other than "representative of employees", the only type of "representative" referred to in Section 302 (Pet. brief, pp. 26-27). The argument apparently is that whatever may be the meaning of "representative" in the NLRA, it has a broader meaning in other Titles of the LMRA. This contention ignores completely the express terms of Section 501(3). Moreover, in these other Titles, as in the NLRA, there is no variation of the meaning of "representative" with respect to a "representative of employees."

What the Government fails to note is that under the Taft-Hartley Act, as under the original Wagner Act, "representatives of employees" are unique. Nothing in this law or any other purports to tell employers, the public, business, industry or finance (to take petitioner's own examples) how they shall choose their representatives in their economic dealings with others; nowhere are these other groups combined by law into appropriate units with elaborate mechanics prescribed for the election of "representatives" under Government auspices, and with the "representative" chosen by the majority being the exclusive "representative", for the minority who would have preferred another as well as for the majority.

And yet this is precisely what the Act does in the case of employees, and only employees. To argue, therefore, that the word "representative" when used with reference to employers, the public, or other groups in the community does not have the meaning for which we contend is to miss

the entire point of the Act and what it accomplishes. Whatever may be the meaning of the word with reference to these other groups, Section 302 deals only with a "representative of employees" and here the meaning is clear, precise and uniform throughout the statute. It does not cover a union official when the Union itself is the employee representative.

Indeed, we fail to see how the single word "representative" could be construed to cover both the Union and its various officials, to say nothing of other unspecified categories of persons, as contended by petitioner. The Union and its officials are entirely separate, both practically and juridically. The Union, when acting as statutory "representative", is the agency directly responsible to the employees and subject to their control through the provisions of the amended National Labor Relations Act. The officers are the agents of the Union, appointed or elected. They are responsible and accountable to their principal, the Union, and not to the employees of any given bargaining unit. The respective rights, powers, duties, and obligations of the principal and the agent differ completely. Each is specifically referred to and separately described in the LMRA. Thus, the Union is described by a specific term, "labor organization", its officers are referred to in the statute as "officers" [NLRA Section 9(h)] or "agents" [NLRA Section 8(b), LMRA Section 301(b)] and when it is desired to extend the statutory coverage to both the Union and its officials, the clear phrase "a labor organization or its agents" is used [NLRA Section 8(b)]. A single word, "representative", undefined except in terms of its NLRA meaning, cannot conceivably be held to encompass both types of entity, and the statute makes no attempt to do so.

4. The error in seeking to have the one word cover the two types of entity and the irreconcilability of that attempt with the concept of exclusivity contained in the NLRA appears clearly in the facts of this case. The Government's

own statement of facts (Pet. brief, pp. 6-8) discloses that the only functions sought to be ascribed to respondent, as President of the ILA, were those performed in the collective bargaining process. This, of course, is the function of most union officers. And in line with the Government's theory that a "representative of employees" is anyone who "acts on behalf of the employees" (Pet. brief, p. 24), it was sought to be proved that respondent acted for employees in collective bargaining, or, to use the statutory word, that he was a "representative" of the employees in collective bargaining. But the statute clearly provides (NLRA Section 9) that the "representative" referred to therein is the *exclusive* representative for purposes of collective bargaining, meaning, of course, that there can be no other. And, as we have shown, in this case the exclusive representative, within the meaning of the Act, was not respondent at all but the ILA and its subdivisions.

5. Petitioner errs when it states (footnote 3, p. 18), that in labor-management parlance, the term "employee representative" commonly refers to a union officer; and neither of the sources cited by petitioner uses this term. In the years since the enactment of the original NLRA, "employee representative" or "representative of employees" has acquired in labor-management parlance the same meaning that the term possesses in this most familiar of all labor relations statutes. And the same may be said for the parlance of this Court. For example:

> "In No. 10, the constitutional issue was raised by a suit to restrain the Board from holding a representation election in a bargaining unit in which appellant *union* was the *employee representative*, without permitting its name to appear on the ballot. . . ." (Emphasis supplied.)
>
> *American Communications Assn.* v. *Douds*, 339 U. S. 382, 386 (1950).

> The *union was thereupon*, [after election] *certified as the exclusive bargaining representative of the em-*

ployees in question in respect to wages, hours, and other conditions of employment.

* * *

"Contract in labor law is a term the implications of which must be determined from the connection in which it appears. Collective bargaining between employer and the *representatives of a unit, usually a union*, result in an accord as to terms which will govern hiring and work and pay in that unit." (Emphasis supplied.)

J. I. Case Co. v. *NLRB*, 321 U. S. 332, 333, 334-335 (1944).

6. There being no support in the statutory language for petitioner's position, the Government brief resorts to a naked appeal to this Court to perform a purely legislative function. Petitioner argues that it was the object of Congress to preserve the legitimate rights of employers, employees and labor organizations, that the receipt of money by a union officer from an employer, whatever the motive, purpose or circumstance, is an evil, and hence that the "goal will best be reached by reading the term 'representative'" as the Government argues (Pet. brief, pp. 9, 15-16). We think the inappropriateness of such an argument addressed to this tribunal so clear as to require no further elaboration. See *Anderson* v. *Wilson*, 289 U. S. 20, 27 (1933); *Matter of Doyle*, 257 N. Y. 244, 268 (1931).

D. The Language and Meaning of Section 302 of the LMRA Show That Under That Section, as Under Every Other Provision of the Act, Respondent Was Not a Representative of Employees.

By virtue of the definition of "representative" contained in Section 501 of the LMRA, it is mandatory to construe that term in Section 302 as having the same meaning that it possesses in the National Labor Relations Act. Apart from this, however, Section 302 itself shows

that the term "representative", under the facts of this case, refers solely to the ILA and not to respondent or any other union officer.

Paragraphs (a) and (b) of Section 302 prohibit outright the payment or delivery of money or other thing of value from an employer to any representative of his employees who are employed in an industry affecting commerce. Such payment and its acceptance are made crimes on the part of both employer and employee representative.

It should be observed that Congress in these paragraphs did use the term "representative", which had acquired a definite well-established meaning in the years that the original NLRA was on the books and which was used in precisely the same way throughout the LMRA of 1947. Had it so desired, Congress could have selected another word which would clearly have encompassed union officers. If Section 302 were intended to cover persons in defendant's position, Congress could for example have readily used the term "agent of a labor organization". The word "agent" is well-known to the law, it would clearly cover union officers, and it is the very term used in this same Labor Management Relations Act when union officers were intended to be covered by a statutory provision. Thus in Section 8(b) of the NLRA (Section 158(b) of the Code), first added in 1947, the Legislature has prohibited certain unfair labor practices by "a labor organization or its agents". When Congress intended sweeping coverage of union officers, or coverage of both a union and its officers, it knew well how to use appropriate and definite language to accomplish its purpose. Its failure to use the same type of terminology in Section 302 and its use instead of a word uniformly employed to designate a specific statutory status must be viewed as purposeful, and the word so used must be given its accurate statutory meaning.

Petitioner relies heavily upon the use of the word "any" before "representative" and before "employees" in para-

graphs (a) and (b) as supporting its interpretation of the statute. We believe that word does no such thing. Whatever may be the scope of "any", and granting it the widest possible application, that word cannot grammatically or logically transform someone into a "representative" who would not be one otherwise. A man must first be a "representative of employees" before he can be covered by the term "any representative" of employees. And as indicated above in connection with NLRA Section 9(g), the word "any" is occasionally used in the NLRA as part of the key phrase without in the slightest changing its meaning with respect to the issue herein involved.

For two distinct reasons the word "any" is wholly appropriate and in no way indicates an attempt to vary the meaning of the term "representative" from that given to it throughout the remainder of the statute.

In the first place the employees of a single employer may be divided into several appropriate bargaining units. These may be on a craft, plant or any other basis recognized by the statute. Each such unit may be represented by a different representative. To proscribe a transfer of money to any of those representatives, it was quite appropriate to use the word "any".

Taking the facts of this case, the evidence discloses that Daniels & Kennedy, Inc., and J. Arthur Kennedy & Son, Inc. were in the trucking, warehousing and stevedoring businesses (R. 22). Only their longshore employees were represented by the ILA. In all likelihood their trucking and warehousing employees were represented by the International Brotherhood of Teamsters and Warehousemen. Their office and clerical employees may well have been represented by an office workers union. Naturally Congress intended to prohibit payments to any of these representatives, and used language appropriate for this purpose.

For yet another reason the use of the word "any" is fitting. Again considering the facts of this case, the parties

to the collective bargaining agreements, on behalf of the employees, are the ILA and its affiliated local unions (R. 23). The ILA and such affiliated locals are, as set forth in the stipulation of facts, the recognized collective bargaining agents and bound by the terms of the collective agreements (R. 23). To prohibit transfers of money to any of these labor organizations, that is the ILA or its affiliated local unions parties to these agreements, the word "any" preceding "representative" is entirely natural and proper. It in no wise signifies an intent to apply the word "representative" to union officers.

Following the general prohibitions in Paragraphs (a) and (b) of Section 302, Paragraph (c) sets forth certain exceptions thereto. The first exception relates to money or other thing of value payable by an employer to any representative who is an employee or former employee of such employer as compensation for services rendered. Such an exception is obviously necessary in those instances where an individual is a representative within the meaning of the statute, a situation which as we have shown above, is legally possible and which occasionally occurs. If no such exception were in the statute, it would be impossible for a unit of employees to select as their bargaining representative one of the workers in the group, thereby denying to them the full, unlimited choice of representative which is guaranteed under the NLRA.

The second exception in Section 302(c) relates to the payment of money in satisfaction of a judgment of a court or award of an arbitrator. Here too the necessity for such an exception is obvious. It should be borne in mind that the suits and arbitrator's awards contemplated by the exception are not between union officers and employers but rather between the employer and the Union itself. Indeed, under the great majority of collective bargaining agreements, including those in evidence herein, arbitration machinery may be invoked only by the employer or the

Union, that is, the parties to the agreement, and not by any individual. Of course, in a unit where an individual is the representative of employees and hence the party to the collective bargaining agreements, that individual may be a party to arbitration proceedings or court suits. That such is not the case in the instant situation is plain.

The third exception relates to the sale or purchase of an article or commodity in the regular course of business. Certainly there is no reason why a labor organization or an individual, in those instances where an individual is the employee representative, should not be permitted to purchase the products of an employer on the same terms and conditions as any other customer. In such a situation something of value, namely the product sold, passes from the employer to the employee representative, so that the exception is necessary in order for the statute to exempt from its general prohibition a transaction which should obviously be permissible. Nor is this a merely theoretical matter, since many labor unions purchase the products of the employers of their members. Petitioner is in error, therefore, when it asserts that under the statutory construction adopted below, this exception can have reference only to a representative who is an individual (Pet. brief, p. 21).

The fourth exception concerns the check-off of union dues, provided, however, that a written assignment has been made by the employee. One of the principal objects of Section 302 was to prohibit check-offs established through collective agreement between union and employer without the consent of any of the individual employees. This exception, it is important to note, is applicable in terms only to payments to a labor organization. It can have no application to any payments to an individual, be he a representative, as the term is used in the statute, or merely a union officer. For as the statutory language shows, a check-off relates to membership dues in an organization. No individual representative receives or is entitled to any such

dues, so that no occasion could ever arise for exception number (4) to come into play except in those instances where the employee representative is a labor organization. Consequently this provision is further evidence, if such be needed, that the word "representative", as used in Section 302, does not refer to union officers, but is to be given its true and proper statutory meaning in accordance with the mandate in Section 501 of the LMRA.

Indeed, if it were intended by the general prohibitions in paragraphs (a) and (b) of Section 302 to prohibit the delivery of money to a union officer or agent rather than to the Union itself, then Congress would have failed to accomplish the very purpose which it had in mind, that is, the prohibition of check-off payments to labor organizations without the consent of the employees.

The fifth and most important exception deals with welfare and pension funds. It provides that the general prohibition shall be "inapplicable with respect to money or other thing of value paid to a trust fund established by such representative" when certain conditions are met. Among the most important of these conditions are joint administration of the fund, a specific, detailed, written agreement and an impartial umpire to resolve disputes.

These requirements are all met in the welfare and pension plans of the longshore industry. In fact the Agreement and Declaration of Trust of the welfare plan in evidence refers to Section 302 in terms, and provides that the trust created is intended to qualify under the conditions set forth in that section (Def. Ex. C).

It cannot be emphasized too strongly that the statutory language refers to a "trust fund established by such representative". The "such representative" referred to obviously is the same "representative" covered by paragraphs (a) and (b). In the case at bar, as in every case where a labor organization is the bargaining agent and negotiates

and executes collective bargaining agreements, the welfare or pension trust fund has been established by the Union and administered jointly by the Union and the employers. Specifically, in the longshore industry the ILA has established both a welfare and a pension fund, and such funds are administered through trustees appointed by the ILA and the New York Shipping Association.

The identity of the parties by whom the welfare and pension trust funds are "established", to use the statutory word, appears plainly from the language of the respective plans. Indeed both the Welfare and Pension Plans covering longshoremen in the Port of New York do use the statutory language, each of them providing at its very outset that the Plan and the trust fund created thereunder are "established" by the employers and "the International Longshoremen's Association" (Def. Exs. A and C).

Although conceding that the construction adopted below gives consistent meaning to each of the five exceptions, petitioner argues at length that Congress would not have deemed it worthwhile to make an exception applicable only to representatives who are individuals, apparently on the theory that an insubstantial number of persons would be affected (Pet. brief, pp. 10-11, 19-22). The lack of merit in this argument is revealed not only in Section 302 itself, but through the LMRA as a whole.

In the first place this argument, which really applies only to the first exception in Section 302(c), ignores the expressed statutory policy to give employees their free and unrestricted choice of representatives. In view of the absolute ban on *all* receipts in subdivisions (a) and (b) of Section 302, the exceptions to this ban had to be equally all-inclusive and cover *all* types of exception which Congress thought appropriate to make available to either type of representative, irrespective of the relative number of individuals affected. If this were not done, the area of em-

ployee choice would be limited, and the policy of the NLRA would in some measure at least be unintentionally thwarted by Section 302. Since Congress had no such desire and since individuals were to be included within this area of employee selection, by the express terms of the NLRA, exceptions applicable to such individuals were a necessary part of Section 302(c).

Petitioner also ignores the well-known historical fact that the proponents of Section 302, Senators Byrd, Ball, Jenner, etc., were not overly sympathetic to the cause of labor organizations or desirous that the number or strength of trade unions be increased. An individual or group of individuals was commonly put forward to employees as an alternative to labor organizations by those who wished to discourage strong collective action by employees through bona fide unions. The proponents of Section 302 and their supporters would never have drafted a provision which made it more difficult for employees to choose an individual as their representative.

But perhaps the simplest answer to the Government's contention is found in the other provisions of the Taft-Hartley Act. For how can it be said that the subject of individual representatives was too trivial to be included in Section 302 when the same subject is clearly treated in other sections of the same Act? (See NLRA Sections 8(d) and 9(c)). And since in these NLRA sections the references to an individual clearly encompass only one who is a representative in the statutory sense, it seems futile to argue that a similar reference in Section 302 could not have been and was not intended to cover the same type of relationship.

Petitioner likewise errs when it asserts (Pet. brief, footnote 5, p. 24) that Section 302(c)(5) uses the term "representative of employees" in relation to the administrators of the trust fund. Here, as everywhere else in the Act, the

key phrase refers to the bargaining representative in the statutory sense.

A careful reading of the statutory language in question, Section 302(c)(5)(B) discloses that this provision refers throughout, except in one clause, not to the day-by-day administration of the trust fund by the trustees, but to the initial agreement between the employer and the bargaining representative establishing such funds. This applies to the optional designation of neutral persons, to the requirement that "such agreement provides" for an impartial umpire or the appointment of an umpire by the district court, and to the requirement that such agreement "shall also contain provisions for an annual audit".

Only at one point is reference made in Section 302 (c)(5)(B) to the administration of the fund by the trustees. And there the term used to describe such administrators appointed by the Union and the employers is not "representative" but "employer and employee groups". Hence the word "representative" is given its true and consistent statutory meaning and the union-appointed trustees are described by another term entirely, "employee group".

It is plain that the word "representative" in Section 302 cannot refer to union officials rather than the Union itself. For if Congress had intended "representative" to have such meaning it would have failed entirely to accomplish its admitted purpose of regulating welfare funds. In the case of such welfare funds, employer contributions or payments are made not to any union official or agent but either to the Union itself or to the trust fund. In the case of those funds which existed prior to the enactment of the Labor Management Relations Act of 1947 and which were administered solely by the Union, the very type of fund Congress wished to curb, all employer payments were made directly to the Union and not to any individual officer.

It certainly cannot be presumed that Congress in enacting this section would have used language in such a way as to fail completely to accomplish its primary aim.

Nor, as we have shown above, can the single word "representative" be construed to cover both the Union and its various officials, to say nothing of various other unspecified categories of persons. The two types of entity are legally and factually distinct, with different responsibilities, entities, duties, and powers, both under the LMRA and the provisions of general law.

The remaining provisions of Section 302 serve further to confirm the correctness of the decision below and refute the Government's contention that Section 302 was designed to protect the "integrity" of the collective bargaining process from "corrupt" employer influences. Thus paragraph (e) grants injunctive powers to the district courts to restrain violations of Section 302 without regard to the provisions of the Clayton Act and the Norris-LaGuardia Act. The very grant of injunctive powers to the courts would seem to show that this is not in the nature of an anti-bribery or anti-extortion statute. Injunctive powers would hardly be appropriate if the transactions sought to be curbed were in fact surreptitious "pay-offs" or "shake-downs".

Moreover, the Clayton and Norris-LaGuardia Acts relate respectively to the impact of the anti-trust laws on labor organizations and the issuance of injunctions in labor disputes between employers and labor organizations. If the word "representative" in the LMRA were intended to describe union officers or "labor leaders", these other statutes would have had no applicability in the first place, and there would have been no need to include in Section 302 a paragraph specifically providing that they shall have no effect on the remedial relief allowable under that section.

Paragraph (f) states that Section 302 shall not apply to any contract in force on the date of the enactment of the statute until approximately one year thereafter or until the expiration of such contract, whichever first occurs. Again if this statute were in fact intended to prevent bribes, "sell-outs" or corrupt influences as the Government contends, it would have been absurd for Congress to permit such an illicit transaction to be made without penalty for a full year after the enactment of the statute simply because it had been agreed to prior to such enactment.

There had been no case, civil or criminal, decided under Section 302 between the time of its enactment in 1947 and the trial of this case in December, 1954, in which the term "representative" was applied to an officer of a union or in which a payment to such an officer by an employer was at issue. The bulk of litigation arising under this section has dealt with the legality of certain welfare funds pursuant to exception (5) of paragraph (c); in other cases the issue turned on the legitimacy of making check-off payments to a labor organization under exception (4); and one case concerned the propriety of a payment by an employer to a union under exception (2).

In every case the payment made or contemplated to be made was to a labor organization acting as the "representative of employees" within the meaning of the LMRA, or to a trust fund established by such representative and the employer. In seven long years no prosecutor attempted to indict a labor official or an employer for gifts made from one to the other, although it is commonly known that thousands upon thousands of such gifts are made each year.

From these facts it is certainly fair to conclude that prosecutors have never believed Section 302 to apply to union officials. To adopt the interpretation advocated by petitioner would mean twisting the meaning of the term

"representative" to such an extent as to make its use in Section 302 totally alien to the language and intent of the section itself and wholly irreconcilable with the statutory definition of "representative" and with every single other use of that same term in the remaining portions of the statute.

POINT II

The legislative history of Section 302 of the LMRA shows that Congress in enacting the statute intended the word "representative" to have the same meaning as in the amended NLRA, that is, the party selected as such by the majority of employees of a bargaining unit, and did not intend the word to apply to union officers.

A. The Purpose of Section 302 Was to Limit the Area of Collective Bargaining and More Particularly to Regulate Union Welfare and Pension Funds.

The legislative history of Section 302 makes it amply clear that at the time of the enactment of the statute, the only time that counts, no Congressional intent existed to prohibit payments to union officers or agents.

The basic purpose of the section was to limit the area of collective bargaining by barring all payments to a union treasury unless made in accordance with the exceptions enumerated and under the specific conditions there set forth. Through this section Congress sought to eliminate the growing practice of employee representatives in using their tremendous bargaining power to force employers to make huge payments to them, usually for welfare or pension funds. These funds, however, were administered solely by the Union with little or no restriction, and Congress feared that, rather than being expended for the benefit of the employees who earned them, they were being accumulated as union "slush funds" or "war chests".

At the time of the statute's enactment the great industrial example of unrestricted employer contributions to employee representatives was in the field of welfare and pension funds. Accordingly, practically all the Committee reports and Congressional debates concerning Section 302, running into the hundreds of pages, are devoted to a consideration of union welfare funds, primarily those of the United Mine Workers, whether or not they should be regulated, and if so, the standards to be applied. This applies to the Taft-Hartley bill itself and to the Case bill, considered in the previous session of Congress, which contained a similar proposal. Throughout the Congressional debates and the Committee reports, the section is referred to as a provision for the regulation of welfare funds. To a much lesser extent there is evidenced a Congressional desire to limit check-off payments to labor organizations. There is no evidence of any purpose to "eradicate improper employer influences from the collective bargaining process", the object attributed to Congress by petitioner (Pet. brief, p. 16).

While Congress at the time had in mind principally welfare and pension funds, Section 302 was intended to prohibit all similar unrestricted funds and to eliminate their establishment as a permissible subject of collective bargaining between employer and employee representative. Thus, to take a more recent industrial phenomenon, a guaranteed annual wage fund could not be established, in the light of Section 302, by employer payments to the employees' representative and the establishment of a fund held and administered solely by that representative.[3] In this respect Section 302

[3] This does not mean that we contend, as the dissenting judge below erroneously thought, that Section 302 "covers no payments but those made in the course of negotiation and to a bargaining agent of the union for the union" (R. 184). The section prohibits payments to a true statutory "representative" whenever made, and whatever the circumstances (subject to the five exceptions and to the word "willfully" in so far as criminal liability is concerned).

is a further manifestation of the policy expressed by the 1947 Congress in other sections of Taft-Hartley, as for example, Section 8(a)(3) of the amended NLRA which limits the area of permissible collective bargaining by outlawing certain types of union security agreement.

This general purpose to limit collective bargaining in a certain field, with particular attention to welfare funds as the principal current example of the abuse Congress thought to exist, explains the structure of Section 302. With this purpose in mind, naturally Congress cast the first two subdivisions of the section in terms of a ban on *all* receipts of money by an employee representative from an employer and then proceeded to carve out the permissible exceptions. This structure fully supports the statutory construction adopted by the Court of Appeals, and not that of the Government, as petitioner urges in its brief (footnote 13, p. 28; footnote 18, p. 41).

Section 302 had its origin in the Case bill which was before the 79th Congress in 1946. Never considered in committee, it was introduced as an amendment to that bill by Senator Byrd of West Virginia and entitled "Restrictions on Payments to Labor Organizations." Its introduction was prompted by the demand of the United Mine Workers Union for an employer contribution to a union-administered welfare fund of 10¢ per ton of coal. This Fund was administered by the UMW alone with no restrictions on its discretion. Congress feared that it would constitute a multi-million dollar union war chest instead of being used for the benefit of the employees, and the Byrd amendment was accordingly adopted and incorporated in the Case bill. It never became law by reason of Congress' failure to override President Truman's veto of that bill.

A similar provision was introduced in the 80th Congress as part of a comprehensive labor bill (S. 55). No such provision was included in the labor bill presented to the

House at the outset of the 80th Congress, and an attempt to introduce a provision similar to Section 302 failed in the House. 93 Cong. Rec. 3562-70 (1947). Accordingly the entire legislative history on this provision is in effect limited to the proceedings in the Senate and in the Joint Conference Committee of the House and Senate.

The Senate Labor Committee in reporting out the proposed labor bill did not include any provision similar to Section 302. Five members of that Committee, headed by Messrs. Taft and Joseph H. Ball, filed a supplemental report to the Report of the Senate Labor Committee in which, among other things, they favored an amendment to the bill numbered "Section 302" and entitled "Restrictions on Payments to Employee Representatives". (See Rep. #105 on S. 1126, Supp. Views, p. 52.)

It is noteworthy that the section of the Supplemental Report dealing with this proposed amendment is entitled "Limitation on Abuse of Welfare Funds" and except for two sentences on the subject of check-offs, the discussion therein deals entirely with welfare funds and their regulation. These five Senators recognized the origin of their proposal in the Byrd amendment and recognized further that the purpose of the Byrd amendment was to regulate welfare funds. Thus in their Supplemental Report the five Senators described their proposal as "an amendment reinserting in the bill a provision regarding so-called welfare funds similar to the section in the Case bill approved by the Senate."

On May 7, 1947 Senator Ball introduced this amendment on the floor of the Senate. 93 Cong. Rec. 4677 (1947). The amendment was substantially similar to Section 302 of the present law except for one crucial provision.

This key provision concerns directly the meaning of "representative", the very term in issue herein. For Section 302 as originally introduced in Congress had its own

separate definition of this word which was quite different from the meaning given to that term in the NLRA. Paragraph (g) of the section as introduced by Senator Ball read as follows:

> "For the purposes of this section, the term 'representative' means any labor organization which, or any individual who, is authorized or purports to be authorized to deal with an employer, on behalf of two or more of his employees, concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work; and for the purposes of section 301 includes any other organization or fund of which some of the officers are representatives or are members of a labor organization or are elected or appointed by a representative."

This separate definition of representative was also a part of the Byrd amendment adopted by the previous Congress, and certain remarks of individual Senators must be read with this crucial factor in mind.

The bill presented to the Senate for consideration had one other provision that is of the greatest importance in this case. Section 501(3) of the bill, as reported out of committee, read as follows:

> "(3) The terms 'commerce', 'labor disputes', 'employer', 'employee', 'labor organization', 'person', and 'supervisor' shall have the same meaning as when used in the National Labor Relations Act as amended by this Act."

It will be noted that, unlike the final version of this section in the law, the committee bill did not include in Section 501(3) the word "representative" as one of those whose meaning was to be the same as when used in the NLRA. This section was amended by the Joint Conference Committee and not before then. "Representative" was, in fact, the only word added to this section of definitions prior to its eventual passage.

This then insofar as relevant was the version of the bill before the Senate throughout the debates on Section 302.

After the passage of the two widely differing labor bills by the House and Senate, the final version of the LMRA was worked out by the Joint Conference Committee. At this point two changes, highly significant to the issues at bar, were made in the Senate bill, which, as we have seen, included the substance of what is now Section 302.

In the first place the separate definition of "representative" was eliminated from Section 302. And simultaneously the Joint Conference Committee added the word "representative" to the list of terms defined in Section 501(3) of the LMRA as having the same meaning throughout the LMRA as when used in the amended NLRA.

Although an explanation of these changes was not given in the report of the Joint Conference Committee, the reason why they were made seems quite clear from the course of the Senate debates. For on May 8, 1947, at page 4748 of 93 Cong. Rec., Senator Irving Ives of New York made the following remarks:

> "In the first place, I should like to point to subsection (b), on page 2. I wish to inquire whether that could be construed in any way as affecting Christmas presents or birthday presents or anything of that type. The language is rather broad, and it appears to me to be vague. Certainly anything of a legitimate character should not be limited by such a provision."

Senator Ives, it should be recalled, was one of the principal spokesmen of the majority Republican Party in the field of labor relations. A former Dean of the Cornell School of Labor and Industrial Relations, his voice was listened to with respect and his views were accorded great weight. Significantly, he was one of the Senate members of the Joint Conference Committee, he voted against Section

302 in its original form and, he voted for the LMRA when it came up for final passage.

It is entirely likely that the changes in the original bill were prompted by Senator Ives' remarks in which he stated that the statutory language was too broad and might well proscribe legitimate gifts such as Christmas and birthday presents.

In any event, the action taken by Congress, as distinct from the statements made by a very few individual Senators, emphasized the unimportance of the isolated statements, primarily concerned with the Case bill, which are cited in the Government's brief. For we are concerned here solely with the meaning of a single term and this term was defined in a wholly different manner at the time of the Senatorial statements referred to than in its final version, under which respondent has been indicted. It may well have been that the statements by these few Senators were accurate with respect to the version of the bill then under consideration. However, they simply do not apply to the finished product after the two important changes had been made by the Joint Conference Committee.

Moreover, even these isolated statements cannot be considered reliable indicia of Congressional intent, as they are clearly the product of partisan salesmanship in the course of debate. Contrasted with these few remarks, dozens of instances might be cited where Senators referred to the provisions in question as being exclusively designed to regulate welfare funds or as covering only payments to unions or labor organizations. *E.g.*, 92 Cong. Rec. 4891 (Byrd), 4893 (Byrd), 4894 (Byrd), 5340 (Taft), 5345 (Ball), 5428 (Taft) (1946); 93 Cong. Rec. 4678 (Byrd), 4746-7 (Taft) (1947). Several statements to the same effect were made by Senator Ball, a sponsor of this section, after he had introduced it as an amendment to the Taft-Hartley bill. 93 Cong. Rec. 4678, 5015, A2252 (1947). See quota-

tions from Congressional Record in the opinion below (R. 178).

Indeed, as the Court of Appeals opinion so convincingly demonstrates (R. 179), the lone mention of a "union representative" in the debates on Taft-Hartley—Senator Taft's remark quoted in the Government brief, footnote 19, page 43 (93 Cong. Rec. 4746)—does not refer at all to the type of situation involved herein. Senator Taft spoke of a shakedown by a "union representative". In context, however, it is quite clear that what he had in mind was the practice allegedly engaged in by some unions of bargaining for their own benefit rather than for the benefit of the employees represented by them. These unions would exert great pressure to obtain employer contributions to an uncontrolled welfare fund and it was thought by some that such funds would then be used as a union slush or strike fund. The grant of such employer contributions would be accepted by the union as the price for a collective bargaining agreement in lieu of other benefits which should have been received by the workers. This fear was expressed clearly by Senator Ball, in introducing Section 302, when he said:

> "Mr. President, the sole purpose of the amendment is not to prohibit welfare funds, but to make sure that they are legitimate trust funds, used actually for the specified benefits to the employees of the employers who contribute to them and that they shall not degenerate into bribes. . . . I have heard of many cases in which unions have even relinquished wage demands in order to secure a welfare fund with a percentage of the payroll paid into the welfare fund established, and employers have frequently agreed to that procedure." [93 Cong. Rec. 4678 (1947).]

Other Senatorial references to union officials in the debates on the Case bill likewise show in context that the Senators did not have in mind union officers as payees or recipients of money. Such officials, whether identified by name or not, were simply used as a colloquial synonym

for the union itself. Personification of a union through the name of one of its officers is common practice, particularly where the union is led by a powerful official. Thus in dealing with demands made by the United Mine Workers, Senators time and again referred to John L. Lewis although it was quite plain that John L. Lewis was not demanding anything for himself but was merely acting for the Mine Workers in demanding that certain payments be made to that union. Similarly James Petrillo was referred to in the Senate debates when the party intended was not Petrillo the individual but the Musicians Union of which he was president. 92 Cong. Rec. 4891-93 (1946). This type of loose use of language, which appears throughout the Senate debates, certainly cannot be held to govern the construction of a penal statute under which a man has been indicted, convicted and sentenced to a prison term.

Since the Government brief relies so heavily on remarks made during the debates on the Byrd amendment to the Case bill, and since there are, indeed, no statements made in the consideration of the Taft-Hartley bill itself which clearly indicate an intent to cover union officers as recipients of money, it is important to realize that the Byrd amendment and the Case bill as a whole were not intended to tie in closely with the National Labor Relations Act or to constitute a revision of that Act as was the Taft-Hartley law. The Case bill was entitled the "Federal Mediation Act of 1946", and it would by no means follow that the meaning of the word "representative" in such a statute would be the same as in the National Labor Relations Act. This would be so even if the Byrd amendment had no separate definition of "representative". The inclusion of such a definition is explicit, incontrovertible proof that a meaning at variance with that in the NLRA was intended.

The significant thing about the debates on the Byrd Amendment is not the meaning ascribed to the word "representative" in that proposal—since the ultimate use of

that term in the LMRA differed completely in both language and context from its Byrd Amendment meaning—but the fact that the key differences between the separate definition of "representative" contained in the Byrd Amendment and the NLRA meaning of the same word did not go unrecognized. At the very height of the debates, Senator Wayne Morse of Oregon, one of the leading labor relations experts in Congress,[4] delivered a scholarly address on the Byrd Amendment. In the course of his address he referred to the separate definition of "representative", quoted it to his colleagues, and then went on to say:

> "Mr. President, that is a very interesting definition. It becomes apparent, then, that the whole principle of majority rule as set forth by the National Labor Relations Act would be undermined by the Byrd Amendment, because, under it the labor organization with which the employer may deal in establishing a trust fund need represent only two or more of his employees. The existence of a majority representative, certified by the National Labor Relations Board or otherwise validly designated by the employees, would be irrelevant. Apparently, an employer could set up a company union which would participate in the administration of the trust fund. It would be possible, also, for the employer to deal with several organizations, even despite the existence of a majority representative. Moreover, it seems clear that if the protections of the National Labor Relations Act are to be abrogated, an employer could effectively defeat unionization of his employees by the device of setting up a liberal trust fund at the very time that attempts at organization were begun—a stipulation now forbidden under the National Labor Relations Act.

[4] Senator Morse was for 13 years Dean and Professor of Law at the University of Oregon Law School; he was a former Pacific Coast Arbitrator for the U. S. Department of Labor, Alternate Public Member of the National Defense Mediation Board, and member of the National War Labor Board.

> "I submit, Mr. President, that this analysis of the meaning of the word 'representative' as used in the pending amendment is but another reason for proceeding in our consideration of this amendment through committee hearings and affording opportunities for experts, as well as other qualified witnesses, to testify. A report should then be submitted to the Senate showing what would be the effect of the Byrd amendment on the labor relations of this country" (92 Cong. Rec. 5474 (1946)).

Three things are plain from this statement: first, that Senator Morse recognized the obvious fact that the word "representative" in the NLRA meant the exclusive representative chosen as such by a majority of employees in a unit; second, that he thought there were grave dangers in having the Byrd Amendment meaning of that term vary from that of the NLRA; and third, that he understood that if the meaning of "representative" in the Byrd Amendment were brought into conformity with the meaning in the NLRA, then the applicability of that term would be restricted to the exclusive majority representative of a bargaining unit in the same sense that the word is used throughout the NLRA. This he apparently thought to be desirable and this is what was eventually done in the Taft-Hartley law.

One more thing is plain. If the Government's argument herein were adopted, all the consequences described by Senator Morse, as well as others not enumerated, would result. An employer would be empowered by Section 302 not only to establish an employees welfare fund with a minority union but with any officer or agent of a union, either majority or minority. Check-offs could be negotiated and effectuated between employer and minority union. The potentialities of employer influence in legitimate union affairs would be incalculable; the opportunities to influence the employees' choice among competing unions and rival union officers or to shape the course of collective bargain-

ing would be such as to gladden the heart of any imaginative, anti-union employer.

Indeed, if it were desired to introduce subtle, corrupting and improper influences in the collective bargaining process—the very influences which petitioner proclaims itself so anxious to prevent—nothing would do the job better than adoption of petitioner's own argument:

> That the "representative of employees" referred to in the original draft of Section 302 was not an employee "representative" within the meaning of the NLRA is as true with respect to the Taft-Hartley bill as it was in the case of the Byrd Amendment. The separate definition of representative, which Section 302 contained when first introduced by Senator Ball, while far from a model of clarity, might well have applied to union officers. The phrase in that particular paragraph that "some of the officers are representatives" lends support to this view.
>
> Certain it is, as Senator Morse so clearly stated in the Byrd Amendment debates, that this proposed definition was wholly at variance with the concept of exclusive representatives in the NLRA whereby the representative chosen by a majority of employees in a unit was the exclusive representative of the entire unit. For under the proposed definition in Section 302, a "representative" would be anyone who purports to be authorized to deal with an employer on behalf of two or more employees, even though the two employees were part of a unit of 20,000 employees. The bargaining unit covered by the collective agreements in evidence herein was port-wide and included thousands of men. Under this proposed definition such a unit might have hundreds of "representatives", each speaking for two or more employees.

But we need not depend upon analysis or the statements of Senator Morse, who opposed this provision, to perceive the difference between the definition in the pro-

posed Section 302 and the meaning of the same word in the NLRA, which through Section 501(3) eventually became the meaning applicable to Section 302. For Senator Ball himself, the proposer of Section 302, pointed out this fact to his colleagues when he first introduced the section as an amendment. In explaining paragraph (g) of the proposal, he said:

> "Subsection (g) is simply a definition of the term 'representative' as used in the section, which is required to be somewhat different from the definition of 'representative' in the National Labor Relations Act" (93 Cong. Rec. 4678).

In view of these facts it is apparent that any statement made by any Senator in the course of debate has no bearing on the resolution of the issue at bar. For however similar the remainder of Section 302 of the law may be to Section 302 of the bill debated by the Senate the meaning and definition of the word "representative" was most definitely changed prior to passage of the Act. There were no relevant debates on Section 302 after the Conference Committee reported, and under no circumstances can a statement concerning the bill before the Senate made prior to the Conference Report be used to provide the meaning of that word in the final Act of Congress.

In evaluating the industrial effect of the decision below and the significance to the statutory purpose of the changes made by the Joint Conference Committee for the Taft-Hartley bill, it must be recognized that the welfare funds which Congress sought to regulate resulted from direct payments by employers to labor organizations. They were then frequently used by these unions for general welfare purposes without being in trust and without any real limitation on their expenditure. It was felt by many that they were too often used as a "war chest" for union ends rather than the benefit of the workers, and also that discrimination was practiced among the workers in allocating their distribution. See 93 Cong. Rec. 4746-7 (Taft) (1947).

These welfare funds, however, were never paid to union officers but only to the union itself and then only when the union was the "representative of employees" within the meaning of the NLRA. That this was recognized by Congress appears clearly from the legislative record. For example, in the supplemental report by the five members of the Senate Labor Committee in which Section 302 was first considered (Senate Report No. 105, on S. 1126, Supplemental Views, p. 52), the following appears:

> "The necessity for the amendment was made clear by the demand made last year on the part of the United Mine Workers that a tax of 10 cents a ton on coal be paid *to the Mine Workers Union* for indiscriminate use for so-called welfare purposes." (Emphasis supplied.)

The only sense in which Section 302 was intended to curb the power of labor leaders was through the prohibition of the unrestricted receipt by unions of these moneys. In other words, John L. Lewis and other union officials were to be affected, not directly as payees, recipients, or donees of any moneys or things of value, but indirectly as agents or officers of labor organizations which were themselves such payees. If the money could not be received by the union without the presence of safeguards, then obviously the union officers could not permit it to be spent except in accordance with those same safeguards. The unrestricted payments were thus to be cut off at the source.[5]

But this scheme and purpose was in no wise affected by the action of the Joint Conference Committee in narrowing the meaning of "representative" or by the holding of

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[5] This is plainly the meaning of Senator Ball's remark quoted on pages 39-40 of petitioner's brief. The Senator was referring to the diversion by union leaders of moneys received without restriction by their unions from employers, and not to the officers themselves receiving moneys from employers.

the Court of Appeals herein. Since union officers were themselves never directly payees or recipients of welfare or check-off funds, there was no loss to the statutory effectiveness in eliminating them from any coverage that may have existed under the original proposal. And since the true statutory representatives are still covered, the payments sought to be curbed and eliminated at their source have been so curbed. The basic purpose of Section 302 has been upheld; no prohibition on legitimate matters has been imposed; serious constitutional questions have been eliminated; and the term "representative" has been given a uniform and effective meaning throughout the entire Act.

B. Answering Petitioner's Contentions as to Legislative History—Petitioner Misconceives the Purpose of Section 302 and Misreads the Congressional Development of That Section.

1. Petitioner points out that initially the Byrd Amendment to the Case bill contained no separate definition of "representative" and argues that the definition was inserted to narrow the statutory scope while its elimination by the Joint Conference Committee for the Taft-Hartley bill was designed to restore its original broad meaning. Petitioner completely ignores the fact that the Joint Conference Committee also took one other important step with respect to the word "representative" by inserting it in the section of definitions, Section 501(3). Neither the Byrd Amendment nor the Case bill, of course, had any section analogous to Section 501(3), and hence to claim that the Byrd Amendment meaning was restored by the Joint Conference Committee simply reads out of the LMRA one of its key provisions.

Moreover, no reason exists either in legislative history or elsewhere, why the Joint Conference Committee should have wanted to broaden the meaning of "representative", particularly at a time when the bill's supporters knew that they would have to muster sufficient votes to overcome the

anticipated Presidential veto.[6] Nor do we see how the separate definition of "representative" could, as a matter of statutory analysis, be considered narrower in scope than the eventual definition in Section 501(3), in view of the substantive provisions of the amended NLRA.

On the contrary, however, there was every reason why the Conference Committee, in order to obtain Congressional support for the bill, should narrow the scope of "representative" and thereby eliminate doubts which had actually been expressed on the Senate floor (such as those of Senator Ives and Senator Pepper, 93 Cong. Rec. 4748 and Senator Morse, 92 Cong. Rec. 5474). In other words, if Senator Byrd inserted the definition of "representative" in his Amendment to allay fears and narrow the statutory scope, so the Conference Committee for the Taft-Hartley bill substituted for this definition the still narrower meaning given the term in the NLRA, and for exactly the same reason.

2. Petitioner also relies upon the comment of the Joint Conference Committee that Section 302 of the Senate bill "was adopted with minor clarifying changes". We think it clear that the characterization of a change as either minor or major made in a report cannot be regarded as indicative, and certainly not as decisive, of legislative intent. We are not dealing here with a committee's exposition of the meaning of a legislative provision, but simply with someone's evaluation of the importance of a change which was undeniably made.

In stressing so strongly the Senatorial remarks made before the elimination of the separate definition and in arguing that the change made little difference, petitioner

[6] It can hardly be supposed that the Joint Conference Committee was seeking to reintroduce all the uncertainties as to employees' baseball teams, picnics and the like, which had aroused so much opposition to Senator Byrd's original proposal and which are referred to in petitioner's brief, page 33.

would ignore what was *done* simply because of what was said, not as to the substance of the action taken, but as to its magnitude. In ascribing virtually the same meaning to the word "representative", both before and after the Joint Conference Committee changes, the Government totally ignores not only the comparative language of the bill and the statute but also the express words of Section 302's proposer, Senator Ball, who announced to the Senate that the meaning of the word "representative" in his proposal was different from that in the NLRA. In the light of this legislative history and the definition of "representative" in the law as enacted, there can be no doubt that the change was a matter of substance and not merely of language.

Actually, however, the change made was indeed minor, viewed in relation to the general scheme and purpose of Section 302, and the characterization in the Joint Conference Committee report was not inaccurate. For as we have shown, the intent of this provision was to limit the area of collective bargaining and particularly to regulate welfare funds and check-offs. The fact that the Joint Conference Committee changes are crucial to this particular case does not mean that they are not "minor" with respect to the section as a whole. Any change in a statute is bound to be important in a particular case. That this is the first indictment against a union officer in the seven years that the Taft-Hartley Act has been on the statute books is ample evidence that coverage of union officers was never its real purpose and that the elimination of such coverage from the statutory scope was unimportant in effectuating Congressional intent.

To show the error in relying on the characterization contained in the Joint Conference Committee report, it is necessary only to turn to paragraph (g) of Section 302. This paragraph was added for the first time by the Joint Conference Committee and substantially enlarges the rights of employee representatives by restricting the applicability

of the statute. It too is covered by the phrase in the Committee report "minor clarifying changes", and again this is accurate viewing the section as a whole. Nevertheless, in the case of a trust fund which comes within this paragraph, the addition thereof by the Joint Conference Committee makes the difference between lawful conduct and the commission of a crime; to the parties involved, this "minor" change means that they cannot be imprisoned for acts that would otherwise have left them clearly liable to just that fate.

3. The Government brief devotes a great deal of attention (pp. 13, 36-41) to a proposal in the House bill, H. R. 3020, which would have made it an unfair labor practice for an employer to bribe any person in a position of trust in a labor organization. This proposal which was abandoned in the joint conference, is labeled by petitioner "the origin" of Section 302(a) and (b) and is treated throughout the Government brief as though it were intended to accomplish the same purpose as Section 302.

Petitioner's argument is completely untenable both as a matter of statutory language and legislative history. Petitioner has overlooked the fact that Section 302 itself, in substantially the same form as it was introduced in the Senate by Mr. Ball, was also introduced in the House as an amendment to the Hartley bill but failed of adoption there. 93 Cong. Rec. 3562-70 (1947). In this abortive effort lies the House legislative history of Section 302 and not in the wholly unrelated provision relied upon by petitioner.

The purpose of the House proposal was entirely different from that of Section 302. Its object, as appears clearly from House Report No. 245 on H. R. 3020, was to remedy certain alleged abuses by the NLRB in its administration of the Wagner Act. It was felt by the House that Section 8(2), the "company union" provision of the original NLRA,

was being administered to discriminate against independent, unaffiliated unions.

Accordingly, the object of the proposed Section 8(a)(2), (A), (B) and (C) of the House bill was to prescribe more definite standards of employer interference and thus circumscribe the Board's power. Unless there was evidence of the three types of conduct expressly prohibited, namely preventing the union from determining policy out of the employer's presence, bribery of a union official, and financial assistance, the Board was to be powerless to brand a union as employer dominated or to enjoin the employer from his alleged interference.

The Senate left this Section unchanged but adopted two other provisions to accomplish the same result: NLRA Sections 9(c)(2) and 10(c). In view of these two amendments, the House acceded to the elimination of Section 8(a)(2)(A), (B) and (C) of its bill. See House Conference Report No. 510 on H. R. 3020, p. 41.

In short, this heavily-relied upon House proposal sheds no light whatever upon the origin or purpose of Section 302.[7] Its language however is of significance in two re-

[7] Upon the argument at the close of the trial in the District Court, the Judge referred to this very proposal and asked the parties to argue its significance in their briefs. After thorough examination of the legislative history, the United States Attorney concluded that the House proposal had no bearing upon this case. In the text of his brief to the District Court he stated at page 35: "this Bill [H. R. 3020] contained no provision equivalent to [Code] Section 186 [LMRA Sec. 302]"; and in a footnote to that sentence, he effectively dismissed the House provision in the following terms: "Section 8(a)(2)(B)(C) made it an 'unfair labor practice' for an employer to dominate a labor organization by giving a reward to a person of trust in a union for the purpose of perverting his judgment, by assisting any labor organization by means of the check-off or trust fund. These provisions were not applicable to a union representative, carried no criminal sanction, and were eventually eliminated from the Labor-Management Relations Act."

spects. When it was desired to include a union official within the coverage of a statutory provision, the word "representative" was not used, but rather a clearly applicable phrase like "any person in a position of trust in such [labor] organization." And when it was intended to prevent corruption of the collective bargaining process and the betrayal of the interests of a union and its members, the bill expressly required an evil purpose and corrupt conduct as an element of the charge. Such language is wholly appropriate and necessary for the type of legislation which petitioner claims Section 302 to be. Its absence from Section 302 shows that something else entirely was intended.

4. The Government's misplaced reliance on this House proposal illustrates the essential fallacy of its entire view of Section 302. Petitioner asserts that the purpose of this section is "to eradicate improper employer influences from the collective bargaining process" (Pet. brief, p. 16) and hence to strengthen the bargaining power of unions by punishing their faithless employees. Employers, under the Government's interpretation, were to be curbed in their use of economic power to render unions subservient to them in their mutual dealings.

As the Government urges in its brief, this is a laudable aim with which few will disagree.[8] The only difficulty is that it was not the aim of Congress which was dealing with another subject matter entirely. This will be clear upon a moment's reflection as to the ultimate purpose of the Taft-Hartley law and the philosophy underlying it. The whole purpose of Taft-Hartley was to correct an imbalance thought to exist between the economic power of labor and

[8] As indicated herein, however, the section, as interpreted by the Government, goes far beyond this, with consequences both unjust in their application and destructive of the policy of the LMRA. Had Congress really been seeking to accomplish the aim attributed to it by petitioner, it would have used far more appropriate language, similar to that in the abandoned House proposal considered above.

management and the restrictions placed upon the two groups by law. The Wagner Act had proceeded on the assumption that the superior economic power of management was thwarting the legitimate aspirations of employees, and therefore that Act conferred certain rights upon employees and their representatives while curbing some of the types of conduct theretofore engaged in by employers. No correlative restrictions were placed upon unions. By 1947 Congress felt that the pendulum had swung the other way, that the unrestricted economic power of unions now had to be curbed, and that the restrictions on employers should be loosened to enable them to compete with their employees' representatives on more even terms. [See, e. g., the "free speech" amendment to the NLRA, Section 8(c).]

Obviously the construction of Section 302 adopted by the Court below furthers the paramount purpose of Congress. And just as obviously the Government's contention is wholly inconsistent with that purpose. The intent attributed to the 1947 Congress by petitioner might have been appropriate if directed toward the legislature which adopted the Wagner Act. But it misconceives entirely the approach, philosophy and objectives of the Taft-Hartley Congress and would have the 1947 legislators seeking to further an end—the strengthening of the bargaining power of unions—which it was their express desire to discourage.[9]

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[9] The Government's contention that the proposed amendment to Section 8(2) in H. R. 3020 was intended to add something new to the Act and thereby provide additional protection against improper employer influences further illustrates petitioner's basic misconception. That proposal would have added nothing to the Wagner Act. Under Section 8(2) of the original NLRA, employer bribes of union officials constituted the most blatant type of employer interference, compelling the Board to find an unfair labor practice and grant appropriate relief. The House proposal, as indicated above, was intended to take away from the Board's power to eradicate improper employer influences, and the reference to employer bribes merely represented one of the very few situations in which the House was willing to leave the NLRB with a residue of its former power.

5. Petitioner also contends that under the construction adopted below, loopholes may be found in Section 302 (Pet. brief, pp. 12, 22-23). Even if this were so, we think it plain that the existence of loopholes would be no justification for construing a statute in a manner contrary to both its plain language and legislative history, or for introducing into labor relations the chaos which would flow from such an interpretation.

But as a matter of construction, it is questionable whether the examples posed by petitioner are loopholes at all. The union-appointed administrators of a welfare fund are the agents of the Union selected as such by the Union and occupying their positions at the will of the Union. Their receipts of money are made not in their private capacities but as agents of the Union and pursuant to express agreement and direction of their principal. The same may be said as to a parent union which is designated as the recipient of welfare funds by an employee representative in its collective agreement. Whether in such circumstances, the principle of *respondeat superior* and the doctrine of law referred to in petitioner's brief, footnote 14, p. 29, come into play is a matter to be decided in an appropriate case. Suffice it to say there is no evidence that this was the situation herein, and petitioner makes no such claim.

Moreover, even under petitioner's interpretation of the statute, the suggested loopholes, if they do exist, would not be eliminated. Although a parent union might be considered a representative by petitioner, welfare payments could easily be made not to the parent but to another subdivision of the same union which has no relationship to the employees of the employer in question. Or they might be made to a person or agency independent of the Union under such circumstances that the recipient could never itself be considered a representative of employees. In short, petitioner's attempt radically to rewrite the LMRA

would do no more than eliminate one or two of the many evasory contrivances that might be imagined in theory.

In fact and in practice, however, no such evasion either has occurred, or will occur. Membership pressure, tax consequences and internal union considerations are only a few of the many practical reasons why petitioner's suggestions of possible evasion of welfare fund restrictions are more illusory than real, assuming for the purposes of argument only that such could be accomplished legally under Section 302.

In point of fact, as a result of the enactment of Section 302 in its present form welfare funds and check-offs have been regulated in the manner desired by Congress. All such funds in industries affecting interstate commerce are in trust, reduced to a written agreement and administered jointly by employers and unions. The rights of the individual workers are specifically protected by the trust indenture. This has been done even in industries with the most powerful unions, including the United Mine Workers, the particular object of this provision. See *Van Horn* v. *Lewis*, 79 F. Supp. 541 (D.C. 1948). Similarly check-offs are no longer in effect in industries affecting interstate commerce except upon written permission of the employer affected, and then only for the period of time prescribed by the statute. The purposes of Section 302 have been fully accomplished, and without any attempt to bring union officers within its coverage.

POINT III

Strong reasons of public policy and imperative regard for the maintenance of our federal constitutional system require the construction adopted by the Court below.

If Section 302 of the Taft-Hartley Law were construed as applicable to the facts of this case, grave constitutional questions arise under the Tenth Amendment, and problems affecting state and federal relations in the field of criminal law enforcement, already serious enough, become almost insoluble.

It is elementary that when Congress enacts legislation in a field within its competence it thereby "occupies the field" and ousts the states from all jurisdiction over the subject matter, unless a contrary Congressional intent appears. *Cloverleaf Butter Co.* v. *Patterson*, 315 U. S. 148 (1942); *Garner* v. *Teamsters*, 346 U. S. 485, 498-499 (1953).

In the case of the Taft-Hartley Law there is no indication of any intent to permit state action in this field. See *Garner* case, *supra*. Unlike federal statutes such as those which forbid larceny, embezzlement and the wrecking of trains, this act has no provision forbidding a defendant from being tried in both the federal and state courts under two valid, applicable statutes. See 18 U. S. C. Section 659-660, 1992.

The lack of such a provision in a statute is strong evidence that Congress meant to occupy the field to the complete exclusion of the states. See Boudin, *The Place of the Anti-Racketeering Act in Our Constitutional-Legal System*, 28 Cornell Law Quarterly, 261 (1943). If, therefore, Section 302 of the Taft-Hartley Law is interpreted as applying to union officials, then the states have been ousted completely from their traditional jurisdiction over

extortion and bribery committed by any such official. For the Taft-Hartley Law, as interpreted by petitioner, would certainly be broad enough to cover these traditional state crimes and hence would serve to exclude the states entirely from this field. An intent to accomplish such a drastic result is not lightly to be attributed to Congress.

Nor can this problem be solved by assuming that the federal law does not oust the states of jurisdiction and that the states may act concurrently with the Federal Government in prosecuting extortion by and bribery of union officials. Such a holding would only raise another serious problem, that of former jeopardy. Where state and federal governments have each enacted criminal statutes making the same act an offense under the laws of each, conviction or acquittal under state law does not bar a later federal prosecution. *Hebert* v. *Louisiana*, 272 U. S. 312 (1926); *United States* v. *Lanza*, 260 U. S. 377 (1922).

Under such circumstances, a defendant may not only be put in jeopardy twice, but may actually be punished twice, for the same act. But although the federal law does not provide that such double prosecution and punishment constitutes "former jeopardy" in the technical sense, because of the rule that in such a case two offenses have been committed, one under state and one under federal law, the federal courts have recognized that the mere possibility of such double prosecution is abhorrent to our sense of justice. Accordingly, the presence of that possibility has been used as the basis for the strict construction of federal statutes creating "offenses which duplicate or build upon state law". *Jerome* v. *United States*, 318 U. S. 101, 105 (1943).

The statutory interpretation advanced herein by the Government would not only create chaos and confusion in the field of federal-state relations, it would create equally serious problems with respect to the federal penal law

itself. For if the statute involved herein covers all receipts of money by a union official from an employer, other than those falling within the specific exceptions in Section 302, a substantial area of overlapping exists between this section and the Hobbs "Anti-Racketeering Act," 18 U. S. C. Section 1951.

Virtually all violations of the Hobbs Act by a union official or anyone else construed to be a "representative of employees" would, under the Government's theory herein, constitute in and of themselves violations of Section 302 of the Taft-Hartley Law. The exact same act would constitute two separate, substantive federal crimes, each punishable by fine and imprisonment. Conviction or acquittal upon the same evidence under either statute would not bar subsequent prosecution and punishment under the other. This Court should not so construe Section 302 as to give rise to such a monstrous possibility.

POINT IV

Grave Constitutional questions arise under petitioner's interpretation of Section 302. Accepted principles of statutory construction require that these questions be avoided through affirmance of the decision below.

It is well-settled doctrine that where one construction of a statute creates grave Constitutional questions, the Court will, if possible, construe the statute to avoid such questions. *Ashwander* v. *TVA*, 297 U. S. 288 (1936). In the instant case, we believe only one construction to be tenable, the one adopted in the decision below; but should this Court have doubts on the matter, we submit that the Constitutional questions raised by petitioner's view of the statute are so serious as to compel affirmance of the Court of Appeals decision.

Here we shall outline, but not brief, the Constitutional questions that would arise assuming that the statute were construed as petitioner urges. We do not at this time argue, as we did in the Court below, that Section 302 should now be declared invalid in the event the Court decides against us on the statutory issue. We are presenting the Constitutional questions in summary form solely as they bear upon the construction to be given the statute.[10]

A. Section 302 of the LMRA, as Construed by Petitioner, Would Be Unconstitutional in That it Would Be So Vague and Indefinite That Persons Could Not Reasonably Tell Whether or Not They Were Subject to its Terms.

It is well-settled that for a statute to meet the requirements of due process, particularly one prescribing criminal sanctions, it must be sufficiently clear that ordinary, reasonable men can understand its meaning and know whether or not they or the acts which they intend to commit will fall

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[10] We recognize that a respondent is permitted to raise issues other than those specified in the petition for certiorari, in support of the judgment below, *Langnes* v. *Green*, 282 U. S. 531, 535-539 (1931). We also recognize, however, that it is the better practice, particularly when Constitutional issues are involved, to give this Court the benefit of a Court of Appeals opinion, full briefing and oral argument. *United States* v. *Ballard*, 322 U. S. 78, 88 (1944). Since this case has been placed on the summary calendar, there would be no opportunity to argue orally any other issue than the meaning of "representative of employees". Accordingly, we have not raised herein the two Constitutional points presented below, our contention that the word "willfully" in Section 302(d) requires an evil or corrupt purpose under the doctrine of *Morissette* v. *United States*, 342 U. S. 246 (1952), and our further contention that the evidence does not sustain the conviction under any view of the statute. All of these arguments we deem meritorious and none are to be considered abandoned.

within its terms. *Connally* v. *General Construction Co.*, 269 U. S. 385 (1926); *United States* v. *Cohen Grocery Co.*, 255 U. S. 81 (1921); *Winters* v. *N. Y.*, 333 U. S. 507 (1948); *Lanzetta* v. *New Jersey*, 306 U. S. 451 (1939); *Champlin Refining Co.* v. *Corp. Comm.*, 286 U. S. 210, 242-43 (1932); *Smith* v. *Cahoon*, 283 U. S. 553 (1931).

In the case at bar the term "representative", unless accorded the construction urged by us, is far too vague and uncertain to permit Section 302 to stand. Unlike such a term as "agent", which is also used in the LMRA, it has neither a "well-settled common law meaning" nor a technical or other special meaning", the two standards prescribed by this Court in the *Connally* case as minimum essentials for validity. It is similar to the words "gang" and "gangster" which proved the downfall of the statute in the *Lanzetta* case, "locality" and "current rate of wages" in the *Connally* case, and "unjust and unreasonable rate" in the *Cohen Grocery* case, the Court finding that these terms had numerous and various meanings which could not be derived from the common law and which could not be ascertained with any certainty. The mere fact that these terms were all defined in the dictionary, and in some cases in the legal dictionaries, did not save them; so too with the word "representative".

In the language of the *Winters* opinion, a fatal vagueness results "from uncertainty in regard to persons within the scope of the act".

One of the principal sources of this uncertainty is the LMRA itself. "Representative" is defined in Section 501(3) in terms of its NLRA meaning. As shown above, throughout the NLRA, and in other provisions of the LMRA as well, the word has a meaning which does not extend to respondent. To a labor union official in respondent's position, familiar with the NLRA and its administration, this

definition would naturally refer not to himself but to the Union with which he is associated. To construe Section 302 in an entirely different manner can hardly be said to give fair notice to this defendant or to anyone else. And such a construction of one section of an Act where the same terminology has a different meaning in a score of other provisions of the same Act, fails by a wide margin to furnish the specificity required of a penal statute.

Particularly is this so when over a period of seven years no indictment prior to this one has been found against any labor leader, although the receipt of gifts and gratuities by such leaders from employers is widespread and well known to all informed persons. From this fact respondent and every other union official could only deduce that the law enforcement officials of this nation were likewise of the opinion that Section 302 applied only to representatives of employees, within the statutory meaning of that term, and not to any union official.

Only a few examples will suffice to show the utter lack of certainty as to the scope of the term "representative" under the construction urged by the Government herein. Would it, for example, be restricted to an elected officer or would it cover an appointed officer as well? Would it apply to a salaried employee? Would it apply to such an employee performing merely ministerial tasks? Just what degree of responsibility or discretion is required to make such an employee a representative? Would it apply to such officers as Sergeants-at-Arms or Marshall, whose sole functions are to act in certain capacities at membership meetings? Would it apply to a president of a union who does nothing more than preside at meetings, as is frequently the case? Would the term cover only those actively engaged in the collective bargaining process? If so, would a full-time paid and elected officer of high position in the Union, such as a treasurer, be excluded on the ground that

he had no functions to perform with respect to collective bargaining? And suppose the officer or employee had nothing to do with collective bargaining but in other respects acted as agent for the Union in dealings with employers. Would the term apply to a shop steward or other similar person whose duties are to act on behalf of a small number of men on a particular job, the employees in question being only a small fraction of an appropriate bargaining unit within the meaning of the NLRA?

We have considered above merely the indefiniteness of Section 302, if construed as petitioner urges, as it affects persons connected with a majority union in a bargaining unit. But what about others? Would a minority union, barred by the NLRA from bargaining collectively with an employer, be covered? Such unions exist in thousands of industrial units throughout the nation. Are the officers, employees and agents of a minority union within these criminal sanctions? If so, what functions or responsibilities determine their coverage, since none of them, by law, can participate in collective bargaining with the employer concerned, particularly if the unit has a majority union.

And what of those persons who have not yet managed to organize a union in a particular unit but are seeking to do so? Until they succeed, they may make no demands upon the employer, although they may have made many adherents. No answer appears in the statute as to whether this penal provision applies to them or not.

Assume the employees organized a baseball team and the employer contributed uniforms to that team. This subject was discussed by various Senators in the debates on both the Byrd Amendment and the Taft-Hartley bill, and would seem to be within the literal language of the section, as construed by the Government. See also 92 Cong. Rec. 5499 (1946). Or to take one of the multitudes of individuals and firms which aid employees and service

their unions, would an insurance agent advising a union be considered a "representative of employees" so that he or his company would be criminally liable if they accepted a fee from the employer on an unrelated matter? The same situation exists with a host of others who are not officially connected with a union but who might, in the prosecution's view, be held to "represent" employees.

Under the original definition of "representative" which was deleted from Section 302 by the Joint Conference Committee, none of this last group would have been covered, as they do not deal with employees on the collective bargaining level. But if the elimination of this definition was designed to broaden coverage as claimed by petitioner, then "representative" may be argued to extend to all of these groups and individuals. The only thing that may be said with clarity is that the statute provides no answers to any of these questions.

As another example, would the term "representative" apply to an accountant or an attorney acting on behalf of a labor organization? It need only be recalled that the common verb employed to describe the relationship of attorney and client is "represent", that is the attorney "represents" his client. If this be the meaning then the statute makes it criminal for such an attorney to receive a fee from any employer with whom the Union deals, even though the matter for which the fee was earned had nothing whatever to do with labor relations and was in no way inconsistent with the interests of the Union. Many lawyers would be astonished to learn that they are subject to fine and imprisonment for professional acts openly engaged in and wholly lacking in any element of impropriety. In fact, it is not uncommon for unions and employers to be joint parties to litigation on the same side, with the same attorney appearing on behalf of both and being compensated by both.

Under the same theory an attorney retained by a union would be prohibited from receiving from an employer a contribution for a charity or other worthy cause in which the attorney is interested. Certainly Congress could never have intended this, and yet under the theory of the Government here, such may very well be the result.

We have shown only a few ways in which "representative" under petitioner's theory herein wholly fails to apprise persons of whether or not they are subject to the criminal sanctions of Section 302 of the Taft-Hartley Act. Here we have an unprecedented criminal statute which, according to petitioner, makes the mere acceptance of money a crime without any wrongful or criminal intent. In addition the particular status which subjects a person to the coverage of the statute is made so uncertain and defined through use of such a vague and ambiguous term, with no special lay or legal meaning, that the ordinary person in the labor movement has no way of knowing whether or not he may be convicted of a crime under its terms.

Even the trial judge herein, when first confronted with Section 302 at the trial, thought it so vague and "inadequately drawn" as to have no fixed, ascertainable meaning (R. 145-146). Only after lengthy consideration based on voluminous briefs did he change his mind, induced, we believe, by an incorrect view of the law relating to indefinite statutes. The true test, however, is what the statute would mean to the ordinary citizen upon reading it, without recourse to legal briefs, legislative history, or the like. It is far more appropriate to look to the initial reaction of the trial judge upon reading the statute, rather than his ultimate judicial opinion, in determining whether the constitutional standards are met. His initial instinct did not play him false; the section is indeed too vague and inadequate to be permitted to stand. If a trained judge and lawyer could not, by reading the statute, feel that it sets forth intelligible rules of conduct, how should an ordinary

labor leader, or any other citizen, be deemed to have been given the degree of notice constitutionally required in the case of a new crime?

The legal principles applicable to statutes invalid because of vagueness establish beyond doubt that when a statute suffers from this fatal infirmity it is void in toto and may not be used to convict anyone, whatever may be the facts of the particular case. Thus in *United States* v. *Petrillo*, 332 U. S. 1, 5-6 (1947), this Court said:

> "And the motion to dismiss on the ground of vagueness and indefiniteness squarely raises the question of whether the section invoked in the indictment is void *in toto*, barring all further actions under it, in this and every other case. *Cf. United States* v. *Thompson*, 251 U. S. 407, 412."

A statute attacked on grounds of vagueness is judged "on its face" (*United States* v. *Harriss*, 347 U. S. 612, 617 (1954)), and specification of the details of an alleged offense showing that a particular defendant should have known himself subject to the statutory provision will not cure the defect in the statute itself. *Lanzetta* v. *New Jersey*, 306 U. S. 451, 453 (1939).

Naturally, in passing upon the specificity of a statute, the Court will not strike it down because marginal cases might pose questions of doubt. In such event, the marginal cases are left to be resolved as a matter of statutory construction, if and when they arise, with the defendant entitled to the benefit of the rule that penal statutes of questionable applicability are to be construed most favorably to the accused.

This rule, however, could not save the statute herein. For under the construction of "representative" urged by petitioner, there is no general class of cases at which the statute is clearly directed, and if there were, such class does not fall "plainly within . . . [the statute's] terms".

United States v. *Harriss*, 347 U. S. 612, 618 (1954). Rather, the language used "may be as much a trap for the innocent as the ancient laws of Caligula" (*United States* v. *Cardiff*, 344 U. S. 174, 176 (1952)).

Moreover, in our case the doubtful situations are far from marginal. They go to the very heart of the statute and the various categories of persons it might be held to cover. The examples given by us above—and many more might be put—cover the majority of groups and categories of persons associated with labor and labor organizations. No guidance is given by the statute, under the construction advocated by petitioner, as to which of them are covered and which are not or as to what standards bring them within or without the statutory ambit. A statute so loose and indefinite could not stand and, under the established rule, would have to be struck down in its entirety. Moreover, respondent was entitled to rely on the definition in Section 501(3), and any attempt to prosecute him on a construction of the term "representative" at variance with its NLRA meaning fails to give him the notice to which he is constitutionally entitled. Such an attempt also renders the definition in Section 501(3) itself invalid by reason of vagueness. These insurmountable constitutional objections, we submit, argue eloquently for the correctness of the decision below.

B. As Construed By Petitioner, Section 302 Would Be Invalid, Both on its Face and as Applied to this Respondent, for the Further Reason That it is Beyond the Power of Congress to Enact.

We do not, of course, question the power of Congress to regulate employers and representatives of employees, in so far as their acts affect interstate or foreign commerce. But no warrant or authority exists for a Congressional enactment such as this, if sought to be applied to labor union officials in the absence of any evidence of corrupt or evil intent.

The vice of this statute, as so construed, is that it would prohibit a certain act solely on the basis of the particular status or office occupied by the two parties involved. Nowhere in the statute, however, is any link required between the status of the parties and the act to be prohibited. An act, innocent in itself, would be made criminal if a certain relationship exists, even though there is no connection between the two, and the doing of the act is not prompted by or in any way related to the parties' status or position. Thus, viewing the record herein most favorably to the Government, all that has been shown is the fact of status and nothing more.

That an individual is engaged in an industry affecting interstate commerce, either as an employer or a labor union official, naturally subjects him to some extent to Congressional regulation. But such regulation must relate to his acts as an employer or union official. The fact that he occupies such a position or status does not subject his every act to Federal regulation. Only those acts may be regulated by the Federal Government that bear a reasonable and substantial relationship to interstate commerce or the particular part played by the individual in interstate commerce.

In other words, where Congress seeks to regulate union officials because they hold such office, this being an essential element of the crime, it must deal with acts of theirs in that particular capacity. For example, an anti-bribery statute might have at least some conceivable relation to interstate commerce in that it would require an intent to influence the acts of a labor union official in his capacity as such official. This, of course, is the typical form of bribery statute when it is sought to curb the bribery of a union official.

We have discovered no statute, State or Federal which makes the mere delivery or receipt of money criminal upon

the existence of a certain relationship or status held by two private citizens. An intent to influence action is always made an essential element of the crime.

An examination of Chapter XI of Title 18, U. S. Code, shows how alien the statute herein is to the general body of federal penal law dealing with graft, bribery, gratuities or the like. In the first place, these statutes, like the Hatch Act and similar enactments, deal with Government officers, employees, contractors, revenue officers, customs officials, bank examiners and the like. Statutes of this sort have been sustained solely on the basis of the "power of Congress over the conduct of officers and employees of the Government . . . while they retain their office or employment." *United States* v. *Wurzbach*, 280 U. S. 396, 398-99 (1930). As this Court held in *American Communications Assn.* v. *Douds*, 339 U. S. 382 (1950):

> "We do not suggest that labor unions which utilize the facilities of the National Labor Relations Board become government agencies or may be regulated as such" (p. 402).

Moreover, even the statutes in Title 18 customarily require that a particular intent or purpose accompany the receipt of money by a government employee before such receipt is made criminal.

That no jurisdiction has ever attempted to make criminal the acceptance of money by a private citizen absent any wrongful intent is eloquent evidence that such has never been considered within the permissible scope of governmental powers. Moreover, the states, with their broad, general police powers have far more leeway in this respect than Congress which must act within its delegated powers.

Again, a few examples will serve to illustrate the utter absurdity of Section 302, as construed by the Government herein, and its total lack of relation to interstate commerce or any burden or obstruction to such commerce.

Taking the simplest case, Section 302 would make criminal a gift from an employer to a union official without any corrupt intent and simply because they were old friends. It would subject a union official, sick in the hospital, to imprisonment if he accepted flowers or candy sent by an employer. It would prohibit a union official from soliciting and receiving funds from an employer on behalf of a church, a charity, a fraternal order or the like, or as a part of a fight which he conducts against Communism or subversion in the labor movement. A defense that a union president received money from an employer for this purpose would be wholly irrelevant under the statute so construed. Similarly this law would prohibit a union official in his capacity as a citizen from soliciting and accepting political contributions from an employer—a situation far from unusual today where union officers are actively interested and engaged in political activities.

Under Section 302, a union or union official operating a journal, yearbook or other publication would be guilty of a crime for accepting a complimentary advertisement from an employer. Yet this Court may take judicial notice of the fact that there are thousands of such yearbooks and journals throughout the nation which do solicit and accept complimentary advertisements from employers. All of the examples cited above are not merely culled from the imagination, but occur hundreds if not thousands of times each year in virtually every state and federal district of the country.

To take one further example, unusual but far from impossible, if a husband were an employer of labor and his wife an official of a labor organization representing such employees, then it would be illegal for the husband to give his wife money to purchase the family groceries, to pay the rent or for any other personal, family purpose. Fine and imprisonment would be the penalty in such case, irre-

spective of how clear it might be that no corrupt intent existed.

These examples not only show the far-flung and absurd consequences of construing Section 302 so as to make it applicable to a union official, but also the complete lack of constitutional authority or power for any such exactment. Plainly, none of the above examples or any of a multitude of others which unquestionably exist bears any relation to interstate commerce or a burden on interstate commerce. Nor do they bear any relation to any subject matter within the legislative power of Congress.

It is entirely possible, of course, that a particular payment of money from an employer to a union official may be with the intent to influence his actions and may be related to and a burden upon interstate commerce. Under Section 302, however, as construed by petitioner, a delivery of money is equally proscribed even though made for a purely personal, private, social purpose, and as a result of an entirely different relationship than the one set forth in the statute. For this statute is so drafted that if two persons have not only the relationship prescribed, that is employer and union official, but also a social, personal, political, organizational, family or other relationship as well, then the mere existence of the prescribed relationship will cause acts committed as part of the other relationship to be criminal. This Congress may not lawfully do.

Where the language of a federal statute purports to deal with matters beyond the jurisdiction or power of Congress and covers acts which Congress may not validly prohibit, then the entire statute is invalid and void. This is so even though the statute also regulates by the same language acts clearly within Congressional jurisdiction. The courts will not assume the legislative function of "amending" the statute so that it will be limited to matters which Con-

gress could validly prohibit. *United States* v. *Reese*, 92 U. S. 214 (1875); *Trade-Mark Cases*, 100 U. S. 82 (1879); *James* v. *Bowman*, 190 U. S. 127 (1903); *Smith* v. *Cahoun*, 283 U .S. 553 (1931).

As this Court held in the *Reese* case, persons subject to statutory language beyond the power of a legislature to enact need not depend upon the self-restraint of prosecutors or the sifting process of the courts to cut the statute down to proper and lawful proportions. Such a statute is totally invalid and void. In our case, there is not even any evidence of corrupt intent, effect on interstate commerce, or any other factor which would give rise to Congressional power to act. A statute construed so as to reach the facts of this case would be well beyond the limits of federal legislative jurisdiction.

CONCLUSION

It is therefore respectfully submitted that the decision of the Court below should be affirmed.

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January, 1956.

ADDENDUM

Pertinent statutory provisions from LMRA, subchapter II, referred to hereinbelow first by NLRA section number and then by section number in 29 U. S. Code:

1

NLRA Section 1

Section 151. . . . It is hereby declared to be the policy of the United States to eliminate the causes of certain substantial obstructions to the free flow of commerce and to mitigate and eliminate these obstructions when they have occurred by encouraging the practice and procedure of collective bargaining and by protecting the exercise by workers of full freedom of association, self-organization, and designation of *representatives* of their own choosing, for the purpose of negotiating the terms and conditions of their employment or other mutual aid or protection.

2

NLRA Section 2

Section 152. . . . (4) The term "*representatives*" includes any individual or labor organization.

3

NLRA Section 7

Section 157. Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through *representatives* of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, . . .

NLRA Section 8(a)

Section 158(a). It shall be an unfair labor practice for an employer—

4

(3) by discrimination in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage membership in any labor organization: *Provided,* That nothing in this subchapter, or in any other statute of the United States, shall preclude an employer from making an agreement with a labor organization (not established, maintained, or assisted by any action defined in section 158(a) of this title as an unfair labor practice) to require as a condition of employment membership therein on or after the thirtieth day following the beginning of such employment or the effective date of such agreement, whichever is the later, (i) if such labor organization is the *representative* of the employees as provided in section 159(a) of this title, in the appropriate collective bargaining unit covered by such agreement when made and has at the time the agreement was made or within the preceding twelve months received from the Board a notice of compliance with sections 159(f)-(h) of this title, . . .

5

(5) to refuse to bargain collectively with the *representatives* of his employees, subject to the provisions of section 159(a) of this title.

NLRA Section 8(b)

Section 158(b). It shall be an unfair labor practice for a labor organization or its agents—

6

(3) to refuse to bargain collectively with an employer, provided it is the *representative* of his employees subject to the provisions of section 159(a) of this title;

(4) to engage in, or to induce or encourage the employees of any employer to engage in, a strike or a concerted refusal in the course of their employment to use, manufacture, process, transport, or otherwise handle or work on any goods, articles, materials, or commodities or to perform any services, where an object thereof is:

7

(B) forcing or requiring any other employer to recognize or bargain with a labor organization as the *representative* of his employees unless such labor organization has been certified as the *representative* of such employees under the provisions of section 159 of this title;

8

(C) forcing or requiring any employer to recognize or bargain with a particular labor organization as the *representative* of his employees if another labor organization has been certified as the *representative* of such employees under the provisions of section 159 of this title;

9

(D) forcing or requiring any employer to assign particular work to employees in a particular labor

organization or in a particular trade, craft, or class rather than to employees in another labor organization or in another trade, craft, or class, unless such employer is failing to conform to an order or certification of the Board determining the bargaining *representative* for employees performing such work;

10

Provided, That nothing contained in this subsection (b) shall be construed to make unlawful a refusal by any person to enter upon the premises of any employer (other than his own employer), if the employees of such employer are engaged in a strike ratified or approved by a *representative* of such employees whom such employer is required to recognize under this subchapter;

11

NLRA Section 8(d)

Section 158(d) For the purposes of this section, to bargain collectively is the performance of the mutual obligation of the employer and the *representative* of the employees to meet at reasonable times and confer in good faith with respect to wages, hours, and other terms and conditions of employment, or the negotiation of an agreement, or any question arising thereunder, and the execution of a written contract incorporating any agreement reached if requested by either party, but such obligation does not compel either party to agree to a proposal or require the making of a concession: *Provided*, That where there is in effect a collective-bargaining contract covering employees in an industry affecting commerce, the duty to bargain collectively shall also mean that no party to such contract shall terminate or modify such contract, unless the party desiring such termination or modification—

(1) serves a written notice upon the other party to the contract of the proposed termination or modifica-

tion sixty days prior to the expiration date thereof, or in the event such contract contains no expiration date, sixty days prior to the time it is proposed to make such termination or modification; . . .

12

NLRA Section 8(d)

Section 158(d) . . . The duties imposed upon employers, employees, and labor organizations by paragraphs (2) (4) of this subsection shall become inapplicable upon an intervening certification of the Board, under which the labor organization or individual, which is a party to the contract, has been superseded as or ceased to be the *representative* of the employees subject to the provisions of section 159(a) of this title, and the duties so imposed shall not be construed as requiring either party to discuss or agree to any modification of the terms and conditions contained in a contract for a fixed period, if such modification is to become effective before such terms and conditions can be reopened under the provisions of the contract.

13

NLRA Section 9(a)

Section 159(a) Exclusive *Representatives;* Employees' Adjustment of Grievances Directly with Employer

(a) *Representatives* designated or selected for the purposes of collective bargaining by the majority of the employees in a unit appropriate for such purposes, shall be the exclusive *representatives* of all the employees in such unit for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment, or other conditions of employment: *Provided*, That any individual employee or a group of employees shall have the right at

any time to present grievances to their employer and to have such grievances adjusted, without the intervention of the bargaining *representative*, as long as the adjustment is not inconsistent with the terms of a collective-bargaining contract or agreement then in effect: *Provided further*, That the bargaining *representative* has been given opportunity to be present at such adjustment.

14

NLRA Section 9(b)

Section 159(b) The Board shall decide in each case whether, in order to assure to employees the fullest freedom in exercising the rights guaranteed by this subchapter, the unit appropriate for the purposes of collective bargaining shall be the employer unit, craft unit, plant unit, or subdivision thereof; *Provided*, That the Board shall not . . . (3) decide that any unit is appropriate for such purposes if it includes, together with other employees, any individual employed as a guard to enforce against employees and other persons rules to protect property of the employer or to protect the safety of persons on the employer's premises; but no labor organization shall be certified as the *representative* of employees in a bargaining unit of guards if such organization admits to membership, or is affiliated directly or indirectly with an organization which admits to membership, employees other than guards.

15

NLRA Section 9(c)

Section 159(c)(1) Whenever a petition shall have been filed, in accordance with such regulations as may be prescribed by the Board—

(A) by an employee or group of employees or any individual or labor organization acting in their behalf

alleging that a substantial number of employees (i) wish to be represented for collective bargaining and that their employer declines to recognize their *representative* as the *representative* defined in subsection (a) of this section, or (ii) assert that the individual or labor organization, which has been certified or is being currently recognized by their employer as the bargaining *representative*, is no longer a *representative* as defined in subsection (a) of this section; or

(B) by an employer, alleging that one or more individuals or labor organizations have presented to him a claim to be recognized as the *representative* defined in subsection (a) of this section;

the Board shall investigate such petition and if it has reasonable cause to believe that a question of representation affecting commerce exists shall provide for an appropriate hearing upon due notice.

16

NLRA Section 9(g)

Section 159(g) It shall be the obligation of all labor organizations to file annually with the Secretary of Labor, in such form as the Secretary of Labor may prescribe, reports bringing up to date the information required to be supplied in the initial filing by subsection (f)(A) of this section, and to file with the Secretary of Labor and furnish to its members annually financial reports in the form and manner prescribed in subsection (f)(B) of this section. No labor organization shall be eligible for certification under this section as the *representative* of any employees, and no complaint shall issue under section 160 of this title with respect to a charge filed by a labor organization unless it can show that it and any national or international labor organization of which it is an affiliate or consistent unit has complied with its obligation under this subsection.

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Supreme Court of the United States

OCTOBER TERM, 1955

No. 281

UNITED STATES OF AMERICA, PETITIONER

v.

JOSEPH P. RYAN

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

BRIEF AMICUS CURIAE

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BRIEF AMICUS CURIAE

By Pierce Butler, John C. Benson and
M. J. Doherty of the Minnesota Bar

This brief is filed in support of respondent and of the decision of the Court of Appeals. The special interest of the subscribers derives from their representation of certain defendants recently convicted in the District Court of Minnesota of violation of Section 302(a) of the Taft-Hartley Act (29 U.S.C. 186)[1], in which case motions for a new trial are

[1]The order of the Court disposing of certain motions in this case is reported in *United States* v. *Brennan, et al*, 134 F. Supp. 42. Subscribing counsel appeared for the defendants Archer-Daniels-Midland Company and James W. Moore, its Vice-President.

pending, based upon the ground that the convictions were erroneous.

This brief will be devoted largely to the question of the constitutionality of Section 302(a) and (b) under the due process clause of the Fifth Amendment, with some discussion of interpretation incidental to that question. The constitutional principle to be urged is, simply stated, that for validity a criminal statute must be so clear and certain on its face as to be readily understandable by persons of ordinary intelligence. Fuller discussion of the subject will follow later.

ARGUMENT

The word "representative" as used in Section 302(a) and (b) of the Taft-Hartley Act means representative of employees for collective bargaining purposes. The meaning attributed to the word by the Government (i.e., "ordinary", "usual", "everyday" meaning) would render the section unconstitutional.

The validity of the conviction of the respondent Ryan, as in the case of the convictions in the Minnesota case, hinges upon the meaning of the single word "representative" as used in Section 302(a) and (b) of the Taft-Hartley Act (Section 186 of 29 U.S.C.). The word is nowhere in terms defined in the Act, but its meaning is not left open to general construction. Section 501 (Section 142 of 29 U.S.C.), dictates, without latitude, that the word "shall have the same meaning as when used in the National Labor Relations Act as amended by this Act." The National Labor Relations Act as amended by the Taft-Hartley Act is Title I of the latter

Act, corresponding with Sub-Chapter II of Chapter 7, Sections 151 to 168 of 29 U.S.C.

The question as to the meaning of "representative" is thus transferred to the amended National Labor Relations Act and its meaning as used elsewhere in the Taft-Hartley Act or in common parlance, is without significance.

The word "representative" is used in the amended National Labor Relations Act 28 times. With one exception it is used in each of the 28 instances as meaning the representative of employees for collective bargaining purposes. Even in the exceptional instance in which the word is used with reference to employers (Section 8(b) (1)), the reference is to "an employer in the selection of his representatives for the purpose of collective bargaining or the adjustment of grievances". No one (including the Government, the District Court, Judge Hand in his dissenting opinion, in the Court of Appeals, and the District Court of Minnesota) has been able to point to a single use of the word in the amended National Labor Relations Act in any other sense.

The matter comes to this. If the term "representative" be given the meaning as used in the amended National Labor Relations Act, then it does not apply to officers, as such, of labor unions which have been selected as collective bargaining agents by employees. If the word is not so used, then its meaning is not indicated by the Act and it becomes so uncertain and speculative as to render Section 302(a) and (b) invalid under the Fifth Amendment.

The alternative suggestion by the Government that "representative" be assigned its "ordinary", "usual", "everyday" meaning is without justification. It would provide no solution of the problem which would arise if the uses in the amended National Labor Relations Act should be disregard-

ed. The suggested meaning would not satisfy the constitutional requirement of clarity and certainty. Whether the suggested interpretation of the word would be admissible would remain, as it is, a matter of controversy incoı istent with the certitude required of criminal statutes. That this is so has been sharply demonstrated by the facts (a) that the proper meaning of the word and whether the Government's version can be entertained is a question upon which even lawyers and judges have disagreed, the highest court which has passed upon the question having held the Government's contention to be clearly erroneous, and (b) those who have argued in support of the Government's view have found it necessary to resort to and largely rely upon legislative history.[1] A criminal statute shrouded in such doubt on its face that its meaning can only be resolved by a study of legislative history cannot consistently with due process furnish the basis for criminal prosecution.

The District Court of Minnesota while adopting the Government's theory unwittingly exposed the inefficacy of that theory from the constitutional standpoint when it said:

> "Two schools of thought have arisen as to the meaning of the term 'representative'," one of which referred to was that represented by the decision of the Court of Appeals in the instant case.

If the meaning of "representative" in Section 302 be so obscure, uncertain and difficult of ascertainment that the trained minds of lawyers and judges divided into "schools of thought" regarding it, contending with equal confidence for conflicting views, it becomes wholly absurd to claim, on the

[1]The District Court reached its conclusion almost wholly upon legislative history. In its brief in this Court the Government has devoted more than half of its argument to legislative history.

other hand, that it is so clear and definite that citizens of ordinary intelligence should be held responsible for any failure to readily grasp and understand its meaning. Surely they, more than lawyers and judges, can be excused if they separate into "schools of thought" in their efforts to solve such a riddle.

Consider the dilemma of a citizen wishing to conform his conduct to the standard of Section 302, (a) and (b), assuming the position of the Government to be possessed of any substance. First he must examine 18 different sections and 28 different uses of the term "representative" as used in the amended National Labor Relations Act, then repair to the Congressional Library for a study of indefinite duration of the legislative history of Section 302, then weigh the merits of the different conclusions reached by lawyers and judges as to the meaning of the pivotal word upon which may depend the legal or criminal nature of a proposed act. The Fifth Amendment does not leave citizens exposed to any such burden in the avoidance of crime.

The Government advances the theory that the word "representative" as used in the amended National Labor Relations Act is accompanied by qualifying words importing in each case a collective bargaining agent and that this does not preclude construction of the word "representative", when isolated from the context, as having its "usual" or "ordinary" meaning.

It is true that either by direct qualifying words or by context the term "representative" in the amended National Labor Relations Act is limited in meaning to collective bargaining representative. That is why that Act is referred to by Section 501 for the meaning of the word as used in Section 302. On the other hand, if, as the Government argues, Congress by

Section 302 intended to give the word "representative" its "usual", "ordinary", "everyday" meaning (assuming there is any such meaning, which is not conceded), its command that its meaning be found in its usage in the amended National Labor Relations Act is utterly inexplicable. Obviously if Congress intended the word to have some usual, commonly recognized and understood meaning, it would either (a) have said so, or (b) have said nothing. Standing alone, without limitation or explanation, the word would have to be accepted in its ordinary meaning, if such there be. Instead of leaving it so, Congress in effect disclaimed any intention of using the word in any broad, general, indefinite sense, by restricting its meaning by reference to its usage in a special sense. That is the only rational conclusion to be drawn from the resting of the meaning on the amended National Labor Relations Act, which could not conceivably further any purpose of giving the word the broad general meaning the Government advocates.

The decision of the Court of Appeals as to the meaning of "representative" is correct and it is only by adhering to its conclusion that Section 302 can be saved from unconstitutionality.

The term "representative" of employees by legislative use and common understanding is inseparable from the qualifying phrase, express or implied, "of their own choosing". One who seeks to attach to the word, in labor legislation, a novel and different meaning has the burden of showing a clear and unmistakable use in the new and unfamiliar sense. There is no such showing.

The relation of "representative" can exist only by choice of the represented or by imposition. No one in this case claims imposition. Equally impossible is it for anyone to claim that the respondent Ryan was chosen as representative by the employees of Kennedy & Sons. Each unit of employees choose either the individual or labor union to represent them in collective bargaining. They do not choose and indeed may have no voice in the selection of officers of the union.

There appears to be no proof that Ryan was a representative of Kennedy & Sons' employees unless it be supposed that it was the purpose of the Taft-Hartley Act by legal fiat to saddle upon employees persons as representatives in whose choice they are without voice and to whose selection even as officers of the union in question, (if they participated or had opportunity to participate at all), they may have unanimously been opposed. That would be clear imposition.

If by virtue only of a position with a union one can become the representative of employees, what positions are included and in what order as to authority? Does the rule apply to all officers, stewards, business agents, organizers, attorneys, or whom? It would be no answer to say that it includes at least the president. The act is either valid or void on its face, without reference to whether it might be valid if applicable only to certain individuals or classes of persons.

Undoubtedly the constitution and bylaws of unions generally do not purport to give any officer, agent or employee the character of representative of employees and it would no doubt be a matter of amazement to any employee unit to learn that in voting for a union as representative, it was also voting for any or all of the officers of the union to also be representatives, with the result that the employees would have as many representatives, in addition to the union, as the union had

officers, and perhaps agents in various degrees of importance and authority.[1] Suppose the officers of a union, all assuming to act as representatives, should disagree among themselves as to any proposed course of action on behalf of the employees. Whose voice is to be heard above the others? Are the officers to be graded as representative No. 1, representative No. 2, etc., in accordance with the supposed rank of their various offices? The whole theory is incongruous.

If the officers of a union are not selected by employees as representatives and if the constitution and bylaws of the union do not purport to give them that character (without implying that it could), whence then comes any color of authority to act as representative of employees?

The amended National Labor Relations Act provides that:

> "Representatives designated or selected for the purpose of collective bargaining by the majority of the employees in a unit appropriate for such purpose, shall be the exclusive representative of all the employees in such unit for the purpose of collective bargaining. * * *"
>
> 29 U.S.C. 159.

There is no suggestion in the Taft-Hartley Act, including the amended National Labor Relations Act, whereby anyone can become a representative of employees for any purpose except by a majority vote of an appropriate unit of employees. If there be any other means, it must be by virtue of some principle of common law. There is no common law principle which can impose ex officio representatives on employees' units.

[1] The unreasonableness of the Government's position in this connection is further emphasized when consideration is given to the "fluid and elective nature of the official personnel of labor unions", commented upon in *National Labor Relations Board vs. Dant*, 344 U. S. 375, 383.

Those contending that officers of unions should be regarded as representatives of employees do not explain their concept of the nature of the representation involved. Representatives in what sense? For what purpose? With what authority? Are such officers representatives only for the purpose of rendering criminal, under Section 302, payments to them by employers? That appears to be the extent of the representation so far as we have seen any attempt to define it.

The Government in its brief (p. 18) asserts that taking the statutory "definition" together with Webster's, the phrase "any representative of any employees" would seem clearly to cover "any individual who speaks for the employees as a labor union officer" and again (p. 23) "representative is used broadly to encompass any person, individual or entity who or which acts on behalf of the employees". This again is representation by imposition. It omits the indispensable element of authority. Assuredly an individual or entity who or which assumes to speak or act on behalf of employees without authority cannot speak or act as a "representative". Officers of a union have not as such authority in their own names to act or speak on behalf of the employees who have chosen the union as their representative. They can only act or speak on behalf of and in the name of the union. By no process of permutation can a union and its officers become interchangeable so that if the one is a representative the other is also.

The Government points to the use of the word "representative" in Titles II and IV of the Taft-Hartley Act in senses at variance with bargaining representatives. If there be such variance, it well explains why the word as used in Section 302 is differentiated from such uses by attaching to it the meaning of the amended National Labor Relations Act, thereby

effectively excluding any contrary meaning it might have under other provisions of the Taft-Hartley Act.

The Government argues that its construction of the statute would render the Act more effective to accomplish the supposed purpose of Congress, but a criminal statute cannot be enlarged beyond its face in the interest of effectiveness.

> "It is axiomatic that statutes creating and defining crime cannot be extended by intendment, and that no act, however wrongful, can be punished under such a statute unless clearly within its terms. 'There can be no constructive offense, and before a man can be punished his case must be plainly and unmistakably within the statute.' United States vs. Lacher, 134 U.S. 624."

Todd vs. United States, 158 U.S. 278-282. To the same effect is *United States vs. Weitzel,* 246 U.S. 533, 543.

Test of Constitutionality

This Court has frequently laid down the rules respecting constitutionality applicable to criminal statutes.

In *Lanzetta vs. New Jersey,* 306 U.S. 451, 453, it was said:

> "No one may be required at peril of life, liberty or property to speculate as to the meaning of penal statutes. All are entitled to be informed as to what the state commands or forbids."

In *Williams vs. North Carolina,* 325 U.S. 226, 276, the rule was thus stated:

> "This court has said that a statute which either forbids or requires the doing of an act in terms so vague that men of common intelligence must necessarily guess at its meaning and differ as to its application, violates the first essential of the due process of law."

Again, in *United States vs. Cardiff*, 344 U.S. 174:

"The vice of vagueness in criminal statutes is the treachery they conceal either in determining what persons are included or what acts are prohibited. Words which are vague and fluid * * * may be as much of a trap for the innocent as the ancient laws of Caligula."

Further in *Connally vs. General Construction Co.*, 269 U.S. 385, 391:

"That the terms of a penal statute creating a new offense must be sufficiently explicit to inform those who are subject to it what conduct on their part will render them liable to its penalties, is a well recognized requirement, consonant and alike with ordinary notions of fair play and the settled rules of law."

Complementary Rules

Complementary of the rule laid down as above is the further rule that as between two possible interpretations of a statute, one of which is consistent with validity and other not, the former will be adopted. On that subject this Court has expressed itself as follows:

"This court has consistently favored that interpretation of legislation which supports its constitutionality."

Screws vs. United States, 325 U.S. 91, 98.

"The cardinal principle of statutory construction is to save and not to destroy. We have repeatedly held that as between two possible interpretations of a statute, by one of which it would be unconstitutional and by the other valid, our plain duty is to adopt that which will save the act." (citing cases)

National Labor Relations Board vs. Jones & Laughlin Steel Corp., 301 U.S. 1, 30.

This rule of preferential construction extends to cases where a particular construction would only give rise to serious doubt as to validity. Thus in the *Jones & Laughlin* case, supra, this Court added to the passage quoted: "Even to avoid a serious doubt the rule is the same." In *Ashwander vs. Tennessee Valley Authority*, 297 U.S. 288, 348, it was said:

> "When the validity of an act of Congress is drawn in question, and even if a serious doubt of constitutionality is raised, it is a cardinal principle that this Court will first ascertain whether a construction of the statute is fairly possible by which the question may be avoided."

Criminal Statutes Are to Be Strictly Construed in Favor of the Accused

This is another applicable rule well established by the decisions of this and other courts.

> "Statutes creating crimes are to be strictly construed in favor of the accused; they may not be held to extend to cases not covered by the words used."
>
> *United States vs. Resnick*, 299 U.S. 207, 209.

In *Federal Communications Commission vs. American Broadcasting Co.*, 347 U.S. 286, 296, this Court spoke of "the well established principle that penal statutes are to be strictly construed".

This rule has been affirmed in the Circuits and the highest Appellate Courts of the states in cases almost without number. One statement from a Federal and one from a State Court will suffice as illustrations.

> "The statutes must be construed as creating a felony for their violation. Hence, in construing this penal legislation, it is elemental that if it be subject to two ra-

tional interpretations we must accept that favorable to the accused."

Cardiff vs. United States (9th Cir.), 194 F. 2d 686, 688.

However much some may disagree with the construction placed upon Section 302 by the Court of Appeals, no one will for a moment contend that that construction is not a rational one.

"The rule is well sett ed that criminal statutes are to be strictly construed and doubts, if any, resolved in favor of the accused."

State vs. DiPaglia, (Ia.) 71 N.W. 2d 601, 607 (1955).

Question of Constitutionality May Be for This Court

The issue of constitutionality was presented to the Court of Appeals but that Court, finding ground for reversal in its construction of Section 302, refrained from consideration of the constitutional question. Should this Court disagree with the Court of Appeals on construction, the constitutional question would then be properly before it for decision notwithstanding the lack of a decision upon it by the Court of Appeals. *United States vs. American Railway Express Co.,* 265 U.S. 425, 435, *Langnes vs. Green,* 282 U.S. 531, 538, *United States vs. Ballard,* 322 U.S. 78, 88.

CONCLUSION

The mandate of Section 501(3) of the Taft-Hartley Act directing the meaning of "representative" to be found in the amended National Labor Relations Act, allows no choice or latitude but compels acceptance of the usage of the latter Act as the sole guide to the intended meaning of the word. The word is there used in the sense of collective bargaining representative and in no other sense. If that meaning be adopted, there is no constitutional or other question in the case, and the affirmance of the decision of the Court of Appeals necessarily follows. The respondent Ryan admittedly was not a collective bargaining representative of the employees of Kennedy & Sons.

The Government's position respecting the meaning of "representative" is untenable but if by any stretch of tolerance it could be regarded as possibly in accord with the Congressional intent, it would nevertheless have to be rejected on constitutional grounds since that is not "clearly", "plainly" and "unmistakably" the meaning intended, nor would it necessarily be so regarded or understood by a person of ordinary intelligence.

The existing controversy over the meaning of the word and the widespread rejection of the Government's version, including that by the Court of Appeals, is ample evidence that it is at best clouded with uncertainty and ambiguity.

The Government's contention is further excluded from favorable consideration by the rule favoring construction supporting constitutionality over that resulting in unconsti-

tutionality or serious doubt of constitutionality, and by the further rule that criminal statutes are to be strictly construed in favor of the accused.

Respectfully submitted,

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